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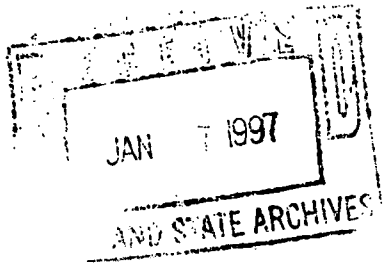

MEMBERS OF THE TASK FORCE

The Honorable Stuart O. Simms, Chair

Veda P. Allen

The Honorable Patricia C. Jessamy

Richard M. Karceski, Esq.

The Honorable Kenneth Montague

Richard B. Rosenblatt, Esq.

James R. Sobers

The Honorable Decatur Trotter

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ACKNOWLEDGEMENTS

The Task Force extends its thanks to the following people and organizations for their expertise and dedication in assisting the Task Force with its work.

The Task Force thanks several experts. Dr. Raymond Paternoster, a professor with the Institute of Criminology at the University of Maryland in College Park, and Dr. Joseph Katz, a professor with the Department of Decision Sciences at Georgia State University, provided the Task Force with information on regression analysis. In addition, John Morris, Esq. gave a presentation on minority representation in jury pools to the Task Force.

The Task Force extends its appreciation to Joseph Cassilly, the State's Attorney for Harford County, who made a presentation to the Task Force on behalf of the State's Attorneys' Association of Maryland. In addition, the Task Force thanks Judith R. Catterton, a past president and a present member of the Board of Directors of the Maryland Criminal Defense Attorneys' Association, who also made a presentation to the Task Force. The Task Force also thanks the Office of the Attorney General which provided valuable legal research, case materials, and documents.

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Finally, a special thanks is extended to Lora A. Wilson, Esq. for her dedication and assistance to the Task Force.

INTRODUCTION

In November 1993, the Governor's Commission on the Death Penalty noted that racial disparity in the implementation of Maryland's death penalty was a "legitimate concern."[1] Therefore, the Governor created the Task Force on the Fair Imposition of Capital Punishment by Executive Order signed on July 2, 1996. This Task Force was formed to determine the causes of racial disparities in the administration of the death penalty in Maryland.[2] After discussing its task, the Task Force determined that it would develop appropriate recommendations for administrative or legislative action.

Governor Parris N. Glendening stated that the "application of the death penalty must be absolutely non-discriminatory. The public must have confidence that the process is devoid of any discrimination." The Task Force has spent six months reviewing the issue of racial disparity within the administration of the death penalty.

The Task Force was comprised of nine persons, seven of whom were African-American and two of whom were Caucasian. The Task Force was drawn from both the legal community and the general

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[1]Specifically, Finding 10 of the Commission's Report states, "There is no evidence of intentional discrimination in the implementation of the death penalty in Maryland, but racial disparities in its implementation remain a matter of legitimate concern." THE REPORT OF THE GOVERNOR'S COMMISSION ON THE DEATH PENALTY AN ANALYSIS OF CAPITAL PUNISHMENT IN MARYLAND: 1978 to 1993, 201 (1993) (hereinafter "1993 REPORT").

[2]In its Report, the 1993 Commission stated that this issue "is an extremely difficult one; clear answers are unlikely to be forthcoming regardless of the resources assigned to the task." 1993 REPORT, 202.

public. Each Task Force member shared his/her time, dedication, and expertise to study carefully and to recommend solutions to this most difficult problem.

Stuart O. Simms, who was appointed by Governor Glendening to chair the Task Force, is Maryland's Secretary of Juvenile Justice. He is also the former Baltimore City State's Attorney and a past president of the State's Attorney's Association of Maryland. Veda P. Allen is a Baltimore resident and an account technician employed by the U.S. Naval Academy. She is active in victim rights organizations. Patricia C. Jessamy is the Baltimore City State's Attorney. Richard M. Karceski, a Howard County resident, was immediate past president of Maryland Criminal Defense Attorney's Association. Kenneth Montague, Esq. is an attorney in private practice in Baltimore City, a member of the Maryland House of Delegates, and a member of the House Judiciary Committee.

Richard B. Rosenblatt, who represented the Attorney General's Office, is an Assistant Attorney General and is presently Deputy Counsel for the Department of Public Safety and Correction. James R. Sobers, who resides in Montgomery County, is a retired U.S. Army Master Sergeant and former State Equal Employment Manager for the District of Columbia National Guard. Decatur W. (Bucky) Trotter is a member of the Maryland Senate, the Chair of the Rules Committee, a member of the Finance Committee, a member of the Legislative Policy Committee, a member of the Joint Committee on Budget and Audit, and a member of the Joint Committee on Legislative Ethics. Rodney C. Warren, who represented the Maryland Public Defender's Office, is an Assistant Public Defender.

The Task Force extends its thanks to Ruth DeCoursey, Esq, an associate of Mr Karceski who assisted in the discussions of the Task Force.

The Task Force is deeply indebted to the Governor's Commission on the Death Penalty (1993) for its report which improved the understanding of the death penalty process and identified a first layer of issued. Similarly, this report identifies another layer of issues and makes recommendations for application to future capital litigation in Maryland.

The Task Force began its work in July 1996 by holding public meetings twice a month. In addition, two subcommittees met separately. Following these meetings, the Task Force began review of its draft report. The findings and recommendations were adopted by consensus. Most, but not all, represent the unanimous view of the Task Force members.

December 1996

EXECUTIVE SUMMARY

The charge of the Task Force was to determine the causes of racial disparity in the administration of the death penalty in Maryland. Based on its review of the death penalty process in Maryland and literature on the administration of the death penalty, the Task Force makes five (5) Findings and seven (7) Recommendations. The recommendations alone will not solve the issue. They will, however, improve the perception and administration of the process. The Findings and Recommendations are summarized below and also appear in Chapter IV of the Task Force Report. Each Finding and Recommendation listed in Chapter IV is followed by a Commentary which provides the reasons of the Commission's action. The first three chapters of the Report outline the death penalty process and information gathered by the Task Force. The extensive Appendices provide readers of the Report with references to an array of materials and information which can be further analyzed and discussed.

Chapter I of the Report outlines the death penalty process. Since there are many decision points in the administration of the death penalty, the Task Force examined the order and context of the process. Chapter I sets the stage for Chapter II which describes how death penalty cases are prosecuted in Maryland.

Chapter III of the Report describes how the Task Force gathered information on racial discrimination in the administration of the death penalty. The Supreme Court has established that in order to prove racial discrimination in the imposition of capital punishment, one must prove that the discrimination was intentional

McCleskey v. Kemp. In McCleskey, a statistical analysis showing that race of the defendant was a significant factor in whether a death sentence would be imposed following a conviction for murder was not proof of a constitutional violation. Legislative responses to McCleskey have largely been unsuccessful. The state of New York has enacted an appellate review standard in death penalty cases that does allow the appellate court to determine whether the sentence was due to the "impermissible factor" of race of the defendant or victim.

The Task Force reviewed reports of several states which have undertaken broad studies to determine whether race affects the dispensation of justice in their civil and justice systems.

The Task Force's inquiry included an extensive number of articles which have been published since McCleskey which contend that the race of the victim influences the likelihood of a defendant's being charged with murder or receiving the death penalty. Nearly all of the articles rely on a type of statistical analysis referred to as regression analysis. Regression analysis is a concept which demonstrates how different variables relate to an event or outcome. Conversely, the Task Force heard from experts who maintained that in the vast number of death eligible cases, the complexity of death penalty cases and the limitations of the statistical model make regression analysis unreliable to prove discrimination.

The Task Force inquiry also included examining several specific hypotheticals as models for decision making in the death penalty process to determine potential areas of racial

discrimination. Finally, the Task Force considered and reviewed diversity training and its usage in one large system, the United States Defense Department. It also reviewed Trial Judge Reports in Capital Sentencing in Maryland and the implications of those reports on victims and survivors and judicial training initiatives.

The Task Force's Findings and Recommendations are as follows:

FINDING 1: **Racial Disparity.** The high percentage of African-American prisoners under sentence of death and the low percentage of prisoners under sentence of death whose victims were African-American remains a causes for concern.

FINDING 2: **Legal Remedy.** Courts will only address intentional discrimination within the capital punishment process.

FINDING 3: **Potential for Prejudice.** The potential for race to constitute a factor in society's administration of justice exists within the entire criminal justice system and is increased by the design of the capital punishment process.

FINDING 4: **Regression Analysis.** Regression analysis, a form of statistical analysis, could be a helpful analytical tool to examine allegations of racial discrimination in the capital punishment process.

FINDING 5. **Victim/Survivor Issues.** The continuity and accuracy of information relating to victims and survivors during the capital sentencing process should be addressed.

RECOMMENDATION 1: **Diversity Training.** Diversity training programs should be developed for all components of the criminal justice system including judges, court personnel, prosecutors, defense attorneys, jurors and law enforcement personnel.

RECOMMENDATION 2: **Jury Pool.** Plans adopted for jury selection in counties should require that jurors be drawn from Motor Vehicle Administration drivers' permits in addition to voter registration lists.

RECOMMENDATION 3: **Voir Dire Examination.** The state courts should adopt a rule to permit limited inquiry of prospective jurors to ensure that the race of the defendant or victim will not be improperly considered in imposing sentence.

RECOMMENDATION 4: **Jury Instruction.** An optional defense requested jury instruction should be created to instruct jurors that their decision should be made without regard to race od the defendant or race of the victim.

RECOMMENDATION 5: **Appellate Review.** State law should be amended to provide that the Court of Appeals, on the automatic review of death sentence, determine whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor including whether the imposition of the verdict or sentence was based upon the race of the defendant or of the victim.

RECOMMENDATION 6: **Victim/Survivor Issues.** At any time in the capital sentencing process, survivors of a homicide victim should be allowed to add an appendix to the trial judge reports.

RECOMMENDATION 7: **Further Study.** Under the direction of the Court of Appeals, the examination of the fair imposition of capital punishment in Maryland should continue.

TABLE OF CONTENTS

CHAPTER I:

GENERAL OVERVIEW OF THE CAPITAL PUNISHMENT PROCESS

All death penalty cases throughout the United States proceed within the framework of the criminal justice system. Regardless of whether a case will end in a death sentence, each case proceeds similarly from the commission of the crime through the defendant's sentencing. For this reason, the Task Force considered the capital punishment process within the context of the criminal justice system.

The capital punishment process begins with the commission of a homicide. As soon as the homicide is reported, the investigation begins. The investigation will involve one or more law enforcement agencies whose officers will process the crime scene. The evidence collected by these law enforcement officers will then be used by the prosecution.

The prosecution of the crime is the next step in the capital punishment process. The prosecutor must determine the specific legal charges to bring against the defendant. This decision is determined in large part by circumstantial and direct evidence, the applicable laws, and other discretionary factors. At some point subsequent to being charged or arrested, the defendant will select an attorney to represent him or her throughout the case.

After charging, the prosecutor may determine whether he or she will accept a guilty plea from the defendant. If the prosecutor will accept a guilty plea, he or she must determine the terms.

If the homicide is "death eligible"[3], the prosecutor may decide whether to seek the death penalty. The determination that the death penalty will be sought depends upon whether the case is death eligible, the prosecutor's application of the law, and his or her subjective assessment of evidence. The prosecutor is not required to seek a death penalty simply because a case appears to be "death eligible". Among the factors a prosecutor might consider before committing the resources to seek the death penalty are the strength of the case; the likelihood of a death sentence being returned; the defendant's age, prior criminal record, parole and probation history; as well as input from the defendant's family and the victim's family. In most states, the decision to seek the death penalty is at the sole discretion of the prosecutor.[4]

If the case is to proceed to trial, the next step in the process relates to pre-trial considerations. These include the

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[3]To be "death eligible" in Maryland, a homicide must constitute first degree murder and at least one "aggravating circumstance" must be present. In addition, the defendant must be the actual killer (except in a contract murder situation), at least 18 years of age, and not mentally retarded.

A brief overview of Maryland's death penalty statute can be found in Chapter II of this Report. An in-depth review of Maryland's death penalty statute can be found in the 1993 REPORT, 1-62.

[4]In Maryland, the decision to seek the death penalty is at the sole discretion of the prosecutor of the county in which the crime was committed. *Calhoun v. State*, 297 Md. 563, 602 (1983)(upholding the capital punishment statute from a constitutional challenge based upon varying policies of prosecutors across the State in determining when to seek a death sentence).

selection of a trial judge and discovery.[5] The defense may request to have the trial moved to another county. The court may also consider pre-trial motions involving the admissibility of evidence such as confessions, identifications, or physical evidence.

After pre-trial considerations, the actual trial may commence. If the defendant requested a jury trial, a jury will be selected. This will involve selecting twelve individual jurors from the jury pool[6] through a process of questioning known as voir dire. During voir dire, the jury pool is asked a series of questions. The judge considers challenges to prospective jurors "for cause" made by both the prosecution and the defense during the jury selection process. Prospective jurors may be struck from the pool for cause and through peremptory challenges[7]. If the defendant does not request a jury trial, the sentencing authority lies with the trial judge.

At trial, the evidence regarding the crime will be presented by both the prosecution and the defense. At the conclusion of the trial, the jury will be given legal instructions on the charges and then will retire to consider a verdict as to the defendant's

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[5]In general, discovery allows both the prosecution and the defense to find out what information the other has. Although governed by many rules, the purpose of discovery is to allow each side to prepare fully for trial and to avoid any surprises.

[6]This Task Force considered the source for jury pools in the Legal Subcommittee portion of Chapter III.

[7]A peremptory challenge is the "right to challenge a juror without assigning, or being required to assign, a reason for the challenge. In most jurisdictions each party to an action, both civil and criminal, has a specified number of such challenges and after using all his peremptory challenges he is required to furnish a reason for subsequent challenges." BLACK'S LAW DICTIONARY 1136 (6th ed. 1990).

Zinnocence or guilt. If the defendant is found guilty of first degree murder[8] by a unanimous jury and is eligible for the death penalty[9], a separate sentencing hearing is held.

During the sentencing hearing, both the prosecution and the defense present evidence regarding the defendant and why he or she should or should not receive the death penalty. The sentencing authority, either a judge or jury, then sentences the defendant.

After the defendant is sentenced, an automatic appeal follows if a death sentence is returned. If the defendant's sentence is upheld, an extensive appellate process may follow.

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[8]There are two types of first degree murder in Maryland: premeditated murder (Art. 27, sec. 407) and felony murder (Art. 27, sec. 410). Premeditated murder is an intentional homicide committed with premeditation, deliberation, or by lying in wait. Felony murder is any homicide, intentional or unintentional, that occurs during the commission of a robbery, rape, kidnapping, arson, or other enumerated felony.

[9]A defendant is eligible for the death penalty only if the prosecution has filed a timely death notice.

CHAPTER II:

BRIEF OVERVIEW OF MARYLAND'S DEATH PENALTY STATUTE

A death penalty may only be imposed under the circumstances set forth in Maryland's death penalty statute.[10] To be sentenced to death, a defendant must be found guilty of first degree murder.[11] A separate sentencing procedure must be held for a defendant found guilty of first degree murder where the State has given proper notice.[12]

During this separate sentencing procedure, the judge or jury must find beyond a reasonable doubt that the defendant was (1) a principal in the first degree (the actual killer and not an accomplice) unless, it was a contract murder; (2) at least 18 years of age; and (3) not mentally retarded. Once it is determined that no impediment exists to the imposition of a death sentence, the sentencing authority must determine that one or more of the aggravating circumstances set out in the statute exists beyond a

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[10]Art. 27, sec. 412. The 1993 Commission reviewed Maryland's death penalty statute in depth. 1993 REPORT, 1-62.

[11]There are two types of first degree murder in Maryland: premeditated murder (Art. 27, sec. 407) and felony murder (Art. 27, sec. 410). Premeditated murder is an intentional homicide committed with premeditation, deliberation, or by lying in wait. Felony murder is any homicide, intentional or unintentional, that occurs during the commission of a robbery, rape, kidnapping, arson, or other enumerated felony.

[12]Art. 27, sec. 413. Under Art. 27, sec. 412(b)(1), the State must notify "the person in writing at least 30 days prior to trial that it intended to seek a sentence of death, and advised the person of each aggravating circumstance upon which it intended to rely".

reasonable doubt to impose death.[13] When the sentencing authority is a jury, the decision that an aggravating circumstance exists must be unanimous or the circumstance cannot be considered. If no aggravating circumstances are found beyond a reasonable doubt, a death sentence cannot be imposed.[14]

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[13]Art. 27, sec. 413 sets out ten aggravating circumstances:

> (1) The victim was a law enforcement officer who was murdered while in the performance of his duties.
> (2) The defendant committed the murder at a time when he was confined in any correction institution.
> (3) The defendant committed the murder in furtherance of an escape or an attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer or guard of a correctional institution or by a law enforcement officer.
> (4) The victim was taken or attempted to be taken in the course of a kidnapping or abduction or an attempt to kidnap or abduct.
> (5) The victim was a child abducted in violation of sec. 2 of this article.
> (6) The defendant committed the murder pursuant to an agreement or contract for remuneration or the promise of remuneration to commit the murder.
> (7) The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agreement or contract for remuneration or the promise of remuneration.
> (8) At the time of the murder, the defendant was under sentence of death or imprisonment for life.
> (9) The defendant committed more than one offense of murder in the first degree arising out of the same incident.
> (10) The defendant committed the murder while committing or attempting to commit a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual offense in the first degree.

[14]Art. 27, sec. 413(f).

If the sentencing authority finds that one or more of the aggravating circumstances exist beyond a reasonable doubt, it then considers whether any of the mitigating circumstances set out in the statute exists.[15] Unanimity is not required for the mitigating

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[15]The eight mitigating circumstances set out in the statute are:

> (1) The defendant has not previously (i) been found guilty of a crime of violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of violence; or (iii) had a judgment of probation on stay of entry of judgment entered on a charge of a crime of violence. As used in this paragraph, "crime of violence" means abduction, arson in the first degree, carjacking or armed carjacking, or rape or sexual offense in the first or second degree, or an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.
> (2) The victim was a participant in the defendant's conduct or consented to the act which caused the victim's death.
> (3) The defendant acted under substantial duress, domination or provocation of another person, but not so substantial as to constitute a complete defense to the prosecution.
> (4) The murder was committed while the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired as a result of mental incapacity, mental disorder or emotional disturbance.
> (5) The youthful age of the defendant at the time of the crime.
> (6) The act of the defendant was not the sole proximate cause of the victim's death.
> (7) It is unlikely that the defendant will engage in further criminal activity that would constitute a continuing threat to society.
> (8) Any other facts which the jury or the court specifically sets forth in writing that it finds as mitigating circumstances in the case.

circumstances where the sentencing authority is a jury. Each individual juror may find mitigation separately. Moreover, unlike the aggravating circumstances, the list of mitigating circumstances permits the identification of any "other" fact that is "mitigating". If the sentencing authority finds that one or more mitigating circumstance exists by a preponderance of the evidence, it then determines whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence.[16]

If the sentencing authority finds that "the aggravating circumstances outweigh the mitigating circumstances, the sentence shall be death."[17] However, if the sentencing authority finds that the "aggravating circumstances do not outweigh the mitigating circumstances, a sentence of death may not be imposed."[18] Again, if the sentencing authority is a jury, the conclusion must be unanimous. If unanimity cannot be achieved, a death sentence may not be imposed and a new sentencing proceeding cannot be convened.

If the death sentence is imposed, the case is automatically appealed to Maryland's Court of Appeals.

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[16]Art. 27, sec. 413 (g)-(h).

[17]Art. 27, sec. 413 (h)(2).

[18]Art. 27, sec. 413 (h)(3).

CHAPTER III:

TASK FORCE MEETINGS AND INFORMATION GATHERING

The Task Force established two subcommittees, legal and methodology, to examine the issue of racial disparity in the capital punishment process. These subcommittees met separately and then reported to the Task Force. In addition to these subcommittee reports, the Task Force considered reports concerning diversity training, judicial training, trial judge reports, and victim/survivor issues.

The following is a summary of the subcommittee reports and the additional reports heard by the Task Force.

A. Legal Subcommittee

1. Status of the Law

The discrimination in capital sentencing on the basis of race of either the victim or the defendant has been the subject of legal action. The claim that the disparity or differences between Caucasians and African-Americans under sentence of death is unconstitutional is based upon equal protection of the law. The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that no person shall be denied the equal protection of the laws.[19]Similarly, disparity arising from the race of the

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[19]Although the State Constitution does not contain an express equal protection clause, Article 24 of the Maryland Declaration of Rights has always been held to embody the concept. *Board of Supervisors of Elections v. Goodsell*, 284 Md. 279 (1979). The Maryland Court of Appeals has concluded that Article 24 and the Fourteenth Amendment have the same meaning and effect. *Pitsenberger v. Pitsenberger*, 287 Md. 20 (1980).

victim in a case where a defendant receives a death sentence is challenged under the Fourteenth Amendment and its state counterparts.

In 1987 the United States Supreme Court addressed the question of racial disparity in the imposition of capital punishment in the case of *McCleskey v. Kemp*, 481 U.S. 279 (1987). The factual predicate for the Supreme Court's review was a study conducted in the state of Georgia by Professor David Baldus. Baldus' multiple variable regression statistical analysis suggested that the race of the defendant was a significant factor in whether a death sentence would be imposed following a conviction for murder. Baldus found the race of the victim to be an even more significant factor. His research found that a death sentence was more likely to be imposed where the victim was Caucasian than where the victim was African-American.

Although the lower court was unimpressed with the statistical analysis,[20] the Supreme Court assumed the validity of the Baldus study. Nevertheless, the Court found no constitutional infirmity. In a 5-4 decision, the Court concluded that an equal protection violation was not established where intentional discrimination was not shown. Although the Baldus study may have shown significant numerical disparity both with respect to victims and defendants, the Court concluded that it did not demonstrate that the disparity

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[20]*See McCleskey v. Kemp*, 580 F.Supp. 338 (ND Ga. 1984).

was the result of intentional discrimination.[21] The Court observed that, without a constitutional violation, any remedy for racial disparity must come from the legislatures rather than the courts.

Initial attempts to legislate a solution occurred in the Congress of the United States in the form of the "Racial Justice Act of 1991."[22] Under the Act, as proposed by Senator Joseph Biden (D-Del), "no person shall be put to death . . . if that person's death furthers a racially discriminatory pattern." Whenever the defense is able to show numerical disparity based upon the race of either the defendant or the victim, the government must show through "clear and convincing" evidence that non-racial factors "persuasively" explain the disparity. The Act specifically provided that the government could not satisfy its burden by only showing that race was not a factor in the specific case being tried. Pursuant to this Act, it would be incumbent upon the prosecutor to justify the numerical disparity for the entire state system. The Racial Justice Act was passed by the House of Representatives, but was omitted from the final crime bill considered by Congress.

Although the federal effort failed, attempts to pass the Racial Justice Act in states continued. There have been several

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[21]Following the *McCleskey* decision, the Supreme Court again rejected a statistical study on disparate impact as a means of generating an equal protection issue in *U.S. v. Armstrong*, 116 S.Ct. 1480 (1996). The issue in *Armstrong* related to selective prosecution on the basis of race in crack cocaine distribution cases. *Armstrong* is not a death penalty case.

[22]S. 618, Chapter 177, section 2922(a).

close votes in several states, but no state has yet adopted the law. Similarly, no state court has deviated from the United States Supreme Court's analysis when reviewing this issue under the state's constitution.

In enacting a death penalty statute, it appears that the New York legislature made an attempt to address the issue of improper consideration of race. The New York capital punishment process includes mandated direct appellate review. The appellate review statute sets out what the New York appellate court must consider:

> With regard to the sentence, the court shall, in addition to exercising the powers and scope of review granted under subdivision one of this section, determine:
>
> (a) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary or legally impermissible factor ***including whether the imposition of the verdict or sentence was based upon the race of the defendant or a victim of the crime for which the defendant was convicted;***
>
> (b) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases considering both the crime and the defendant. ***In conducting such review, the court, upon request of the defendant, in addition to any other determination, shall review whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases by virtue of the race of the defendant or a victim of the crime for which the defendant was convicted;***

N.Y. CRIM PRO s 470.30(3) (McKinney 1996).

Like other jurisdictions, Maryland's mandatory review statute[23] requires review of the sentence to insure that it was not

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[23]Art. 27, sec. 414.

imposed under the influence of passion or prejudice. However, the Maryland statute does not make the specific reference to race found in the New York statute.

2. Jury Selection

In the Maryland case relating to Eugene Colvin-el, a jury was the sentencing authority for both the trial and sentencing hearing. This jury lacked African-American representation. This jury was the result of a jury selection pool in which African-Americans were severely underrepresented.[24] The Court of Appeals applied long-standing precedent to deny the challenge to the composition of the jury array. The Court applied the principle that unless the voter registration lists were used as a means of achieving "purposeful discrimination," no constitutional claim is stated. Underrepresentation in number, standing alone, does not state a claim.

In his post conviction challenge to his sentence, Colvin-el produced expert testimony analyzing voter registration information (the sole source of jury selection) concluding that the underrepresentation of minorities was statistically significant. The expert concluded, however, that if voter registration lists and driver's license lists are combined, the statistically significant underrepresentation is eliminated.

The selection of persons for jury duty is based on the language in *Courts & Judicial Proceedings Article, section 8-104*, which provides:

> The jury commissioner or the clerk of the court shall select the names of the prospective jurors from among those persons 18 years old or older whose names appear on the voter registration lists, and from such

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[24]*See Colvin v. State*, 299 Md. 88 (1984).

additional sources permitted by a plan adopted under (S) 8-201.

Generally, the 24 political jurisdictions in the State have continued to limit the pool for jury selection to voter registration lists, and have not used the flexibility allowed by the section in adopting juror selection plans. Only Baltimore City, Anne Arundel County[25], Somerset County, Worcester County, Dorchester County, and Howard County go beyond voter registration lists for the source of prospective jurors to also include those who hold driver's licenses.[26]

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[25]Anne Arundel County broadened its source for prospective jurors after the decision in the Eugene Colvin-el case.

[26]The provision of law permitting the counties to adopt a jury selection plan that draws from sources in addition to voter registration is not the "motor-voter" law. "Motor-voter" refers to the law requiring that voter registration opportunities be available as a part of the license application or renewal process.

B. Methodology Subcommittee

The Methodology Subcommittee considered reports from other jurisdictions regarding racial discrimination within the criminal justice system. It also surveyed the literature regarding the fair imposition of capital punishment. The committee also examined the application of regression analysis to the study of racial disparity in capital punishment and conducted an exercise during a Task Force meeting regarding two hypothetical cases.

1. State Reports on Racial and Ethnic Bias in the Courts

The Task Force reviewed reports from eight states and the District of Columbia that studied the issue of racial and ethnic bias in the courts.[27] In all but one state, these reports were the product of a task force established by the highest state court. Each task force was created in response to concerns that the state's judicial system was biased in its treatment of racial and ethnic minorities.

Task force size ranged from 13 to 40 members. While the overwhelming majority of the members came from the state bench and bar, lay persons were also represented. Each task force was assisted by a full time project director and a technical support staff. Funding of research projects was received from a wide variety of sources including legislative appropriations, court

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[27] The eight states are California, District of Columbia, Florida, Georgia, Iowa, Massachusetts, Michigan, New York, and Washington. These final reports are set forth in Appendix A.

administrative offices, grants from bar foundations and solicitation of donations from the general public.

While each report examined a wide range of issues within the entire judicial system, this section focuses on those findings regarding minority representation in the legal work force, and treatment of minorities in the criminal and juvenile justice systems.

Demographic surveys were conducted to determine the racial composition of the legal work force. These studies indicated that minorities are underrepresented in the legal community (i.e., as judges and lawyers) as compared to their proportional representation in the general population. While the percentage of minority representation in the court system (i.e., clerks, bailiffs, court reporters, etc.) was consistent with minority representation in the general population, the studies indicated that minorities remain significantly underrepresented in supervisory positions.

Public hearings, mail surveys and telephone surveys were conducted to determine how the general public and those involved in the justice system perceived the treatment of minority defendants. White males generally felt that minority defendants were treated as fairly as their white counterparts. On the other hand, minorities identified several areas in which they believed minority defendants were treated unfairly when compared to similarly situated white defendants. These areas included: harsher treatment of minority juveniles due to cultural insensitivity; fewer opportunities for

minority defendants to obtain pre-trial and pre-sentence release on bond or personally recognizance; overcharging of minority defendants by prosecutors as compared to similarly situated white defendants; and heavier sentences imposed upon minority defendants. Minorities also provided anecdotal data discussing their own experiences of racial bias.

The Task Force consistently identified the absence of a uniform system of data collection as the primary obstacle to conducting a comparative analysis of perceived unfair treatment versus actual treatment of minority defendants. This lack of information led the task forces to recommend that a uniform system of data collection be created. Until such uniform systems were created, many task forces recommended sensitivity training for all of those involved in the criminal justice system and diversification of the professional and non-professional legal work force.

2. Literature Survey

The Task Force surveyed the literature regarding the fair imposition of capital punishment.[28] The following is a summary of this survey.

a. General

In general, the studies found a disparity based upon the race of the victim. According to the studies, the death penalty is

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[28]A bibliography of the literature surveyed is set forth in Appendix B.

sought more often when the victim is white than when the victim is African-American. In addition, the majority of the studies found that African-American defendants accused of killing white victims were more likely to receive the death penalty than white defendants accused of killing white victims.

In 1990, the U.S. General Accounting Office (hereinafter "GAO") published a report concerning capital sentencing procedures to determine if the race of either the victim or the defendant influenced the likelihood that defendants would be sentenced to death.[29] The GAO collected both published and unpublished studies done at the national, state, and local levels.

The GAO found a "pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the *Furman* decision."[30] The race of the victim was found to influence the likelihood of a defendant being charged with capital murder or receiving the death penalty in 82% of the studies.[31]

Evidence that the race of the victim influenced the outcome of the case was stronger earlier in the judicial process than later.[32] Even after controlling for legally relevant variables and other factors thought to influence death penalty sentencing, the studies

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[29]GEN. GOV'T DIV., U.S. ACCOUNTING OFFICE REP. GGD-90-57, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES (Feb. 26, 1990).

[30]*Id.* at 5.

[31]*Id.*

[32]*Id.*

showed that differences remained in the likelihood of receiving the death penalty based upon the race of the victim.[33] In sum, the data supported a strong race of victim influence; however, the race of defendant influence was not as clear.[34]

In *Discrimination, Death and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*,[35] Stephen B. Bright discussed how these racial disparities enter the capital sentencing process.[36] Bright stated that minorities are underrepresented in those positions governing the capital punishment process. Practically all of the prosecutors and judges are white, even in areas with substantial minority populations. Bright also found that racial minorities are often underrepresented in jury pools and are often excluded in the jury selection process. He also showed how this underrepresentation of racial minorities in these positions actually results in racial disparity.

Bright stated that the "most important decisions that may determine whether the accused is sentenced to die are those made by the prosecutor."[37] Those prosecutorial decisions are influenced by many factors such as the strength of the evidence. According to Bright, even this factor is subject to racial variance because the

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[33]*Id.* at 6.

[34]*Id.*

[35]35 SANTA CLARA L. REV. 433 (1995).

[36]This article is representative of information found within the literature surveyed.

[37]*Id.* at 450. Many other authors also came to the conclusion that the prosecutor's decision is most influential.

amount of available evidence often differs "because local sheriffs and police departments investigate crime in the white community much more aggressively than crime in the black community."[38]

Additional factors influencing the prosecutors' decisions are community outrage, "the need to avenge the murder because of the prominence of the victim in the community, the insistence of the victim's family on the death penalty, the social and political clout of the family in the community, and the amount of publicity regarding the crime."[39] The type and amount of publicity a crime receives throughout the process also greatly influences the ultimate outcome of the case.

State's Attorney Joseph Cassilly in his appearance before the Task Force stated that Maryland prosecutors have tried to assure that the death penalty is imposed fairly. He suggested that any examination of racial imbalance concerning those on death row ought to begin with a broad examination of the universe of homicide cases in the state.

Bright next considered the juries in death penalty cases. He found that many capital cases "are tried in white flight suburban communities where there are so few minority persons in the community that there is a likelihood the minority community will be underrepresented on the jury."[40] And even when capital cases are tried "in communities where there is a substantial minority

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[38]*Id.* at 451.

[39]*Id.* at 452-3.

[40]*Id.* at 454.

population, prosecutors are often successful in preventing or minimizing participation by minorities."[41]

Bright also found that the role of the defense counsel lends itself to discrimination. "A lawyer defending the accused in a capital case has the obligation to investigate the life and background of the client in order to introduce mitigating evidence."[42] Therefore, the defendant's lawyer must be comfortable working with the defendant, the defendant's family, and the defendant's friends; otherwise, the defendant's case can be jeopardized.

b. Florida

As noted in the 1993 Report, Florida's death penalty statute is similar to Maryland's.[43] For that reason, the Task Force found the studies concerning the fair imposition of capital punishment in Florida informative.

These studies found that cases with white victims were almost six times more likely to involve a death sentence than those with African-American victims. In fact, of those suspects who killed white victims, African-American defendants were more than twice as

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[41]*Id.*

[42]*Id.* at 459.

[43]Like Maryland's death penalty statute, Florida's death penalty statute applicable to first degree murder lists both aggravating and mitigating circumstances and requires a weighing process by the sentencing authority. However, in Florida the jury's sentence is only advisory and the trial judge may override a life sentence by sentencing the defendant to death, or a death sentence by sentencing the defendant to life. Fla. Stat. Ann. sec. 921.141 (West 1985 and Supp. 1993).

likely as white defendants to be sentenced to death. Moreover, an African-American defendant suspected of killing a white victim was fifteen times more likely to be sentenced to death than an African-American defendant suspected of killing an African-American victim.

These results were found to be consistent in both felony murder and multiple murder cases. One set of authors went so far as to conclude that until "blacks and whites share a similar social and economic status in society, continued use of the death penalty will, in all likelihood, continue to add to the problems of racial inequality."[44]

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[44]Michael L. Radelet & Glenn L. Pierce, *Choosing Those Who Will Die: Race and the Death Penalty in Florida*, 43 FLA. L. REV. 1, 33 (1991).

2. Regression Analysis

Virtually all of the articles which examine the fair imposition of capital punishment employed regression analysis, a type of statistical analysis. To enhance the Task Force's interpretation of regression analysis, Dr. Raymond Paternoster, a professor with the Institute of Criminology at the University of Maryland College Park, gave a presentation. In addition, representatives of the Task Force interviewed Dr. Joseph Katz, a professor with the Department of Decision Sciences at Georgia State University.

Regression analysis is a mathematical concept which demonstrates how a number of different explanatory variables relate to a specific phenomenon.[45] Regression analysis considers this relationship in such a way that one can look at the effects of many variables simultaneously instead of one at a time.[46] A factor is important if it has a substantial impact on the phenomenon being explained. The more the factor impacts the phenomenon, the more important it is. In addition, the factor must be quantifiable.

There are three distinct forms of regression analysis: ordinary least squares, poisson (event count models), and logistic regression. The form of regression analysis chosen to express the

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[45]A phenomenon is also known as an outcome or a dependent variable.

[46]According to Dr. Paternoster, for a regression analysis of capital sentencing decisions to be useful, anywhere from 10 to 50 variables must be considered.

data depends upon the shape of the distribution of the phenomenon.[47]

a. Dr. Paternoster

Dr. Paternoster used regression analysis in his examination of the extent and magnitude of racial disparity under South Carolina's capital sentencing process.[48] The focus of this study was to examine the extent to which the race of the victim and offender affected the prosecutor's decision to seek the death penalty and the jury's decision to impose one.

Dr. Paternoster found that the prosecutor's decision to seek the death penalty was made without regard to the defendant's race. However, his research indicated that prosecutors' decisions were influenced by the victim's race. After considering legally appropriate considerations which could affect this outcome, Dr. Paternoster made three findings. First, South Carolina prosecutors were more likely to seek a death sentence in felony homicides of a white than of a black, particularly if the offender was black. Second, prosecutors' decisions to seek death were motivated by the aggravation of the homicide as reflected both in particular features and in an overall assessment of the case. Generally, the

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[47]Ordinary least square takes the form of a bell curve distribution. The distribution of poisson is a rare event. And the outcome of binary logistic regression analysis is a dichotomy.

[48]Raymond Paternoster & Ann Marie Kazyaka, *The Administration of the Death Penalty in South Carolina: Experience over the First Few Years*, 39 S.C. L. REV. 245 (1988).

data showed that white-victim homicides were more aggravated than black-victim homicides, particularly if the offender was black.[49]

Dr. Paternoster also concluded that South Carolina prosecutors were operating with a race-specific definition of homicide severity. "They appear to have tolerated greater aggravation when the victim was black than when the victim was white, and when a black was slain, prosecutors regularly sought a death sentence only in a homicide of more than normal aggravation."[50]

Dr. Paternoster also examined the extent to which the race of the victim and offender affected the jury's decision to impose the death penalty. Dr. Paternoster found that a jury was more likely to sentence white offenders to death than black offenders. In addition, the jury was more likely to impose a death sentence for an offender who killed a black victim than for an offender who killed a white victim. Dr. Paternoster also found that the "lowest probability of a death sentence being imposed was for blacks convicted of killing blacks"[51], but that "no large race-of-victim effect existed between blacks who killed blacks and blacks who slayed whites."[52] It was difficult to draw firm conclusions from the sentencing data because of the small number of capital sentences imposed at the time of the study.

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[49]*Id.* at 293-4.

[50]*Id.* at 321.

[51]*Id.* at 323.

[52]*Id.* at 324.

During his presentation to the Task Force, Dr. Paternoster stated that regression analysis was an excellent method to measure the problem of racial disparity within a capital sentencing process because the analysis can be challenged and tested. Each variable chosen can be tested to prove whether it is significant and whether it has been quantified correctly.

Dr. Paternoster stated that a study of the Maryland statute may be helpful to calibrate the extent of discrimination, to indicate arbitrariness and capriciousness, to identify those characteristics that offend the conscience, to force Maryland jurors to consistently impose the death sentence, and to devise a basis for redefining capital punishment in Maryland. He estimated that such a study may take nine months and cost approximately ten thousand dollars ($10,000).

Dr. Paternoster also concluded that if the death penalty is to be evenhanded, it should be reserved for the most brutal offenses. His research found that racial disparity is greater in the less aggravated death penalty cases. Conversely, defendants in more aggravated cases were treated similarly.

b. Dr. Joseph Katz

The Task Force interviewed Dr. Joseph L. Katz, a professor with the Department of Decision Sciences at Georgia State University, regarding his article, *Warren McCleskey v. Ralph Kemp: Is the Death Penalty in Georgia Racially Biased?* Dr. Katz testified for the State of Georgia at the evidentiary hearing held in 1983 to investigate McCleskey's claims of racial bias in the Georgia death sentencing system. In his article, Dr. Katz explains why regression analysis or any statistical model is an inappropriate tool for determining whether racial discrimination exists within the death sentencing process.

First, each case must be reduced to a large number of categorical variables which indicate the presence or absence of a factor related to the murder (e.g., Was the victim drunk? Did the victim provoke the defendant?). These categorical variables are unable to capture important elements about a crime factor that are necessary for assessing the severity of the murder. For instance, the fact that the victim used alcohol before the homicide would mitigate the homicide if the intoxicated victim provoked a fight and attacked the defendant, but would aggravate the homicide if the defendant robbed and killed a drowsy victim. The regression methodology throws together these categorical bits and pieces for all cases in an attempt to explain overall sentencing outcomes. Murder cases are stories, not a collection of aggravating, mitigating and evidentiary categorical variables. A one page

summary of a murder case provides much more information about the crime and the appropriate sentence than 500 categorical variables.

Second, murder cases are complex. There are innumerable crime factors and combinations of factors that could be important in explaining the sentencing outcome for a case. In his terms, "This is not traffic court." Jurors are faced with the difficult task of sorting out what is often confusing and contradictory evidence that is presented by the witnesses.

Third, the impact of both the racial and the nonracial variables change, as the combination of crime factors that are assigned to the regression model are varied. Due to the large number of variables that could be meaningful in determining the ultimate sentence, Dr. Katz believes that he can develop regression sentencing models that show no statistically significant racial effects. Furthermore, Dr. Katz believes that he can generate these models with nonsignificant racial coefficients regardless of whether or not the sentencing system is, in fact, racially biased. In his view, these regression models are meaningless representations of the sentencing system under study, and can be constructed to possess either statistically significant or nonsignificant racial effects.

Fourth, if the death sentencing process could be reduced to a meaningful sentencing formula, as the regression methodology attempts to do, Dr. Katz recommends that the jurors be sent home and that death sentencing decisions be made by computer, applying this formula. Dr. Katz believes that murder cases are far too

complex and require careful presentation of the evidence and witnesses in court to decide fairly the fate of the defendant. Dr. Katz does not believe that such a simple reliable sentencing formula is feasible.

Dr. Katz believes that the capital punishment process has sufficient safety nets established within the process to avoid unfairly sentencing defendants to death. The extensive appellate review permits the convicted defendant to challenge his death sentence on the grounds that it was imposed due to racial bias. Dr. Katz believes that it is preferable to have the courts decide what is fair, not a regression model which accounts for only disconnected bits and pieces of a case.

If an inquiry is necessary to determine whether racial discrimination is embedded in the death sentencing process, rather than in an individual case, Dr. Katz believes that there is a need for a very broad, detailed, in-depth summary of each of the relevant cases. This case summary would attempt to follow the decision making process of the prosecutors and juries by compiling the information that was known to each decision maker at the time decisions were made. This would be a costly and time consuming process.

Dr. Katz believes that it is important to view and analyze each case in its entirety for the purpose of judging the fairness of the process. If racial bias is operating in the system, death-sentenced defendants from the affected racial group would tend to have committed murders that are more mitigated and less aggravated

than the death sentenced defendants in the non affected racial group. There is no strict statistical methodology or statistical test that could be applied to the data. The decision about the overall soundness of the sentencing process would be based upon the judgment of the reviewer who is knowledgeable about the expected operation of a fair death sentencing system.

3. Hypothetical Case Exercises

To provide the Task Force with a context in which decisions governing capital punishment occur, the Methodology Subcommittee presented the Task Force with two hypothetical cases.[53] The Task Force members collectively considered the two hypothetical cases in light of the capital punishment process, and the aggravating and mitigating circumstances which the sentencing authority must consider.

The Task Force began its examination of the hypothetical cases by reviewing the capital sentencing process set forth in Chapter I. The Task Force members concluded that racial prejudice could enter the process at any step in a capital case. The Task Force, however, focused on certain distinct aspects.

The publicity regarding an offense could affect whether a death penalty would be sought. The amount of publicity is often related to the race, wealth and social status of both the victim and the defendant. Other factors such as the type of crime and the location of the crime could also affect the publicity.

The Task Force also discussed the various processes available to prosecutors to identify death penalty cases. There was a discussion as to whether prosecutors considered external opinions when making a decision to seek the death penalty. There was a discussion of whether a prosecutor's policy on seeking a death sentence was truly race neutral. While racial selectivity by prosecutors could serve as a tool to control disparity, non

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[53]The two hypothetical cases are set forth in Appendix C.

racially neutral policies could obviously allow discrimination to enter the process.

Removal was another issue specifically considered by the Task Force. The Task Force discussed the legal process through which the final destination of a removed case was determined. The Task Force was concerned that removal from a metropolitan community to a sparsely populated rural community may not truly result in a jury of the defendant's peers.

The Task Force also examined the hypothetical case studies in light of the aggravating and mitigating circumstances which would be considered by the sentencing authority, i.e., the judge or the jury.[54] The Task Force concluded that the application of these circumstances is not always precise because of the unique factual circumstances that apply to each defendant. The application of particular circumstances may depend upon the interpretation of the evidence and facts by both the prosecutor and the sentencing authority.[55]

With the aid of these hypotheticals, the Task Force considered whether the potential for discrimination exists within the process and what possible difficulties the process produces.

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[54]Art. 27, sec. 413.

[55]For example, in the first hypothetical case, Ferguson killed one person, but Francois killed five people. One of the aggravating circumstances set out in Art. 27, sec. 413 is the defendant killed more than one person. Francois clearly meets this aggravating circumstance. However, Ferguson may or may not depending on the interpretation of the evidence and facts by the prosecutor, the sentencing authority, and the appellate court.

C. Other Considerations

In addition to the subcommittee reports, the Task Force considered diversity training, judicial training, trial judge reports, and victim/survivor issues.

1. Diversity Training

At the suggestion of a Task Force member, James Sobers, the Task Force considered the effectiveness and usefulness of diversity training. The Department of Defense has implemented a diversity training program for many years. The Task Force interviewed Major Luis Calatayud, the Director for External Training at the Department of Defense Equal Opportunity Management Institute.

During the interview, Major Calatayud explained that the Department of Defense holds three sixteen-week courses a year to train Military Equal Opportunity Advisors. These advisors become the resident equal opportunity experts for their command. The Institute also holds two week and one week programs directed at the senior non-commissioned officer level and the program manager level that are condensed versions of the sixteen-week course.

These shorter courses are intended to train managers of the command in the language used within the subject matter of equal opportunity as well as instruct them on the basic concepts used by the Equal Opportunity Advisors. The Institute also gives two day seminars on diversity geared towards the senior leadership level to include all newly appointed officers and senior civilians at the Senior Executive level.

At Major Calatayud's suggestion, a representative from the Task Force observed a two day diversity training seminar for those in managerial positions at the Military District of Washington. The course was taught in a facilitative manner. The trainers used personal stories to explain concepts and drew on the audience for discussions. Lecturing was kept to a minimum.

The seminar moved from the intra-personal level to the inter-personal level and, finally, to the organizational level. At the intra-personal level, the participants considered how they were socialized and how their socialization impacts their perceptions of people and how this might impact the decision-making process. At the inter-personal level, the participants considered how to communicate across cultural differences. The organizational level, the participants learned how to integrate people's differences to exploit individual strengths. The two day seminar covered a number of topics including socialization, discrimination, racism, sexism, extremism, affirmative action, and diversity.[56]

The Department of Defense Equal Opportunity Management Institute offers a survey through which senior leaders at every level can evaluate the organizational and equal opportunity climate of their command.[57] In this manner, leaders can evaluate the effectiveness of his or her Equal Opportunity program. In

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[56]A recommended reading list given out by the Department of Defense Equal Opportunity Management Institute is set forth in Appendix D.

[57]These surveys are call Military Equal Opportunity Climate Surveys or MEOCS. Two such surveys and explanatory material are in Appendix E.

addition, the survey better equips leaders to plan actions to improve the overall climate which in turn has a positive effect on mission readiness.

2. Judicial Training

The Judicial Institute is the training arm of the Maryland Judiciary. The Institute has been in existence since 1981. Found in Maryland's Administrative Office of the Courts, the Institute offers basic orientation to trial judges as well as specific courses in March, April, September and October. The specific courses are planned by the Institutes's Board of Directors and includes a broad range of subjects. The sessions are solely for judges and are not mandatory. The Task Force learned that the Institute is sensitive to the issues of gender bias, and ethnic and cultural diversity. The Institute recently piloted courses focusing on awareness of ethnic and cultural differences.

3. Trial Judge Reports

The Task Force examined trial judge reports as a potential source of information and as a means of comparing similarities of defendants sentenced to death.

After a sentence is imposed in a capital case, the trial judge is required to prepare promptly a report and send it to the parties.[58] The required format of the report requests information concerning the defendant, the victim, the offense, and the

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[58]Maryland Rule 4-343(h).

sentencing procedure.[59] In addition, the report requests the recommendation of the trial court as to whether the imposition of the death sentence is justified.[60]

The Task Force reviewed several trial judge reports and noted that these reports were filled out inconsistently. Some reports were extremely thorough, giving more information than was required. Other reports, however, left the majority of the questions unanswered. This inconsistency precludes reliance on trial judge reports at this time for any in-depth analysis of capital cases.[61] Given the limited data, the Task Force was unable to find any noteworthy similarities between defendants which would apply to the focus of this Task Force.

4. Victim/Survivor Issues

The Task Force also considered victim and survivor issues. Veda Allen, a survivor, presented three issues to the Task Force.

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[59]A copy of the Report format required by Rule 4-343(h) is set forth in Appendix F.

[60]The Committee note under Rule 4-343 states that in "case of a life sentence, the report of the judge is filed with the Clerk of the Court of Appeals only for informational purposes to permit the Court to make the determination in other cases required by Code, Article 27, sec. 414 (e) (4)."

[61]The initial purpose of the trial judge report was to assist the Court of Appeals in conducting the statutorily mandated proportionality review. In *Pulley v. Harris*, 465 U.S. 37 (1984), the Supreme Court held that proportionality review was not constitutionally required, and the statutory mandate was deleted shortly thereafter. *See* Laws of Maryland 1992, Chapter 331. In proportionality review the Court of Appeals considered whether the death sentence in the case against other cases which had received the death penalty.

First, Ms. Allen recommended that the data concerning the victim required in the trial judge report be expanded to include the victim's marital status, parental status, employment status, level of academic training, hobbies, club memberships, community participation, and the victim's future plans and goals. Second, the victim impact statement should follow the defendant throughout the judicial process and should be updated.

Third, additional information regarding the impact of the crime on survivors should be collected. Such information should include the emotional status of family members and significant others, and psychological profiles on immediate family members and other close friends and relatives.

CHAPTER IV:

FINDINGS AND RECOMMENDATIONS

This Task Force has considered the issue of the fair imposition of capital punishment. After studying the current status of the law and the literature regarding this issue, the Task Force makes the following findings and recommendations.

A. Findings

FINDING 1: Racial Disparity. This Task Force finds that the high percentage of African-American prisoners under sentence of death and that the low percentage of prisoners under sentence of death whose victims were African-American remains a cause for concern.

Commentary. This Task Force was updated on the racial breakdown of those prisoners on death row: 14 African-Americans and 3 Caucasians. Of these seventeen prisoners, only 6 African-Americans victims were killed while 16 Caucasian victims were killed. These racial disparities alone are cause for concern.[62]

The Task Force also surveyed the literature addressing the issue of racial disparity in capital punishment processes across the nation. The literature overwhelmingly found disparity with respect to the race of the victim and disparity with respect to the race of the defendant. These findings from various capital

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[62]A chart of defendants on Maryland's death row is set forth in Appendix G.

punishment processes across the nation coupled with the racial breakdown of prisoners on Maryland's death row and their victims causes concern.

FINDING 2: Legal Remedy. The Task Force finds that courts will only address intentional discrimination within the capital punishment process. The courts have determined that the legislature is the proper forum for addressing racial disparities within the process.

Commentary. The United States Supreme Court examined the issue of racial disparity within the capital punishment process in *McCleskey v. Kemp*, 481 U.S. 279 (1987). In this case, the Court found that the Baldus study, a regression analysis study, was insufficient to overturn the defendant's sentence of death under Equal Protection and the Eighth Amendment. In fact, the Court states:

> McCleskey's arguments are best presented to the legislative bodies. It is not the responsibility--or indeed even the right--of this Court to determine the appropriate punishment for particular crimes. It is the legislatures, the elected representatives of the people, that are "constituted to respond to the will and consequently the moral values of the people." [citations omitted]. Legislatures also are better qualified to weigh and "evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts".

Id. at 319.

FINDING 3: Potential for Prejudice. Based upon the literature survey and the examination of the hypothetical cases, the Task Force finds that the potential for race to constitute a

factor in the administration of justice exists within society's criminal justice system and is increased by the design of the capital punishment process.

Commentary. The literature regarding the capital punishment process, which included many states, found that race may constitute a factor in the process. First, minorities are often underrepresented in those positions governing the capital punishment process. Second, the decisions of those governing the capital punishment process; i.e., law enforcement officers, prosecutors, defense attorneys, judges, and jurors, make decisions which may affect the defendant sentence. Such decisions were considered by the Task Force when they examined two hypothetical cases according to the capital punishment process. This examination demonstrated how and where race may become a factor. In addition, the Task Force examined the two hypothetical cases with respect to the aggravating and mitigating circumstances set out in the statute. This examination also demonstrated how race may become a factor.

Maryland may not be any different than the states which were examined. Therefore, the further study recommended below becomes increasingly important

FINDING 4: Regression Analysis. The Task Force finds that regression analysis, a form of statistical analysis could be a helpful analytical tool to examine allegations of racial discrimination in the capital punishment process. Regression analysis has been used in other states to assess the impact of race

on the imposition of a death sentence. Based upon expert testimony, this Task Force finds that in the most heinous cases defendants and victims are treated equally. However, the race of the defendant and the race of the victim may become factors in the less heinous cases.

Commentary. There are those who question the value of regression analysis studies to the assessment of the impact of race on the imposition of a death sentence. According to some critics, regression analysis studies give only bits and pieces of a case and do not allow any one case to be seen in its entirety. Therefore, regression analysis studies do not allow the varying degrees of factors to be considered. In addition, the facts needed for a successful regression analysis study are often unavailable or inaccurate.

However, regression analysis is one useful tool, among many, which provides a mechanism to evaluate the capital punishment process. Used in conjunction with other mechanisms, regression analysis studies provide important information.

Before a regression analysis study can be successfully done in Maryland, however, better records of the specific facts in all death eligible cases must be maintained.

FINDING 5: Victim/Survivor Issues. Although not directly related to the Executive Order, the Task Force finds that information continuity issues relating to victims and survivors are important and should be addressed.

Commentary. At the present time, scant information relating to victims is contained in the trial judge reports or anywhere within the capital punishment process. Such information is necessary to address the anomaly that the death penalty is rarely imposed in cases where the victim is African-American.

B. Recommendations

The preceding Findings led the Task Force to recommend several administrative changes to the capital punishment process. Some of the Task Force's Recommendations require statutory and rule changes. Others merely call for continued cooperation among participants in the administration of capital punishment.

RECOMMENDATION 1: Diversity Training. There being a potential for bias and prejudice throughout the criminal justice system in both capital and non-capital cases, the Task Force recommends that a diversity training program be developed and become a regular part of the training programs established for all components of the criminal justice system including judges, court personnel, prosecutors, defense attorneys, jurors, and law enforcement personnel.

Commentary. Because racial bias is such a wide-spread societal problem, diversity training for those involved in the criminal justice system would be extremely beneficial to its fair imposition. Diversity training should include the appreciation for and valuation of the differences among groups and should include such factors as cultural, ethnic, language and religious differences. Where such programs have been initiated, it is recommended that the programs be evaluated and focused to obtain maximum self-awareness of potential subconscious bias, and made mandatory. Where such programs are precluded due to financial constraints, it is recommended that the State offer limited funding for the training of in-house personnel who then would be able to

provide initial training to the remainder of the office. It is recommended that the public defender offer such training to those members of the private defense bar interested in obtaining such training.

In addition, the Task Force recommends that the Court of Appeals consider including diversity training in their curriculum for those attorneys who have just passed the Maryland State Bar. The Task Force also recommends that the Court of Appeals consider implementing diversity training for jurors prior to a capital trial.

RECOMMENDATION 2: Jury Pool. The Task Force recommends that the plan adopted for jury selection in each jurisdiction pursuant to Courts & Judicial Proceedings Article, sec. 8-201 (1995 Repl.Vol.) be amended in those jurisdictions where jury selection is made solely from the voter registration lists. The Task Force recommends that the amended plan require that jurors be drawn from a list obtained from the Motor Vehicle Administration of holders of motor vehicle drivers' permits in addition to the voter registration lists. Such a combined source of potential jurors is likely to more accurately reflect the racial composition of the community.

Commentary. According to statistics developed by Dr. Richard Seltzer for the years prior to 1984, which were presented to the Circuit Court for Anne Arundel County in the post conviction proceeding initiated by Eugene Colvin-el by John Morris, Esq., there was a statistically significant underrepresentation of

African-Americans on voter registration records as compared to the population reflected in census data. Although the testimony specifically related to Anne Arundel County, Dr. Seltzer studied several other Maryland jurisdictions and reached the same conclusion. Dr. Seltzer's analysis of motor vehicle records reflected that a merged voter registration/driver's license "pool" did not differ to a significant respect from the community census figures.

In his remarks to the Task Force, Mr. Morris noted that the underrepresentation was not statistically significant immediately after the Rainbow Coalition voter registration efforts in the mid-80's, but that his litigation relating to the purging of voter registration rolls in the most recent election reflected that it was the voters registered in the registration effort of the mid-80's that were falling off of the rolls. Thus, it was his feeling that any end of racial underrepresentation in registered voters was very temporary.

Current law allows jurors to be drawn from the voter registration rolls or "any other source" designated in a plan adopted on a county by county basis. Baltimore City and a limited number of counties have already used this flexibility and have supplemented the voter registration list with motor vehicle operators over the age of 18. According to the information set forth above, such a combined list more closely mirrors the racial composition of the community.

The Task Force has not conducted any study that would suggest that there is a direct correlation between the racial composition of a jury and the verdict returned in a criminal case, or between the racial composition of a jury, the race of the defendant, and the sentenced returned in a capital case. Nevertheless, given the numerical disparity as to race that exists with respect to prisoners under sentence of death, the constitutional concept of jurors of one's peers must extend beyond legal confines. The jury that sentences a person to death must be drawn from a source that is as close to a mirror of the community as possible.

RECOMMENDATION 3: Voir Dire Examination. The Task Force recommends that the Maryland Court of Appeals adopt an amendment to Maryland Rule 4-312(d) (Jury Selection -- Examination of Jurors) to provide that "In every capital case, the court shall permit or conduct limited inquiry of prospective jurors to ensure that the race of the defendant or the race of the victim will not be improperly considered in imposing sentence."

Commentary. Authors attempting to explain the racial disparity that exists with respect to prisoners under sentence of death have noted the possibility that the sentencing jurors may bear a subconscious racial bias. It is the feeling of this Task Force that no instruction can remedy subconscious bias or any other form of racial prejudice. The Task Force concludes that if such racial bias exists within potential jurors, the only remedy is to take steps to uncover the prejudice prior to the time that the jury is seated so that such persons do not serve as jurors. Thus, the

Task Force recommends that the examination of jurors extend to inquiry on the issue of racial bias.

The Task Force does not mean to suggest that the Court cannot put controls on the extent of the inquiry on this subject. Indeed, by its recommendation the Task Force does not intend that *voir dire* be expanded beyond an inquiry to uncover exclusion "for cause". However, the Task Force is of the opinion that some inquiry into the possibility of racial prejudice is appropriate in every case. The Task Force does not believe that "race" need be an express issue in the case or motivation for behavior. It is the Task Force's belief that because of the numerical disparity currently existing among the prisoners under sentence of death, and the disparity existing with respect to the race of the victims, no further issue need be generated to permit the inquiry.

RECOMMENDATION 4: Jury Instruction. This Task Force recommends that a jury instruction be created to instruct jurors that their decision should be made without regard to the race of the defendant or the race of the victim. This instruction should be used at the option of the defense.

Commentary. Because racial bias has the potential of entering the process through the decision of the jury, having such an instruction reminds the jury that race of the victim and the race of the defendant should not have a role in their decision. Such an instruction should be at the discretion of the defense attorney who can decide whether such an instruction would be beneficial or may be potentially harmful. Of course, if such an instruction would be

highly prejudicial due to the facts of a particular case[63] then the trial judge should have the power to eliminate it from the jury instructions.

This Task Force leaves the drafting of such an instruction to the appropriate organizations.

RECOMMENDATION 5: Appellate Review. This Task Force recommends that Article 27, sec. 414(e)(1), Md.Ann.Code (1996 Repl.Vol.), be amended to provide that the Court of Appeals on the automatic review of sentence shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor **INCLUDING WHETHER THE IMPOSITION OF THE VERDICT OR SENTENCE WAS BASED UPON THE RACE OF THE DEFENDANT OR OF THE VICTIM OF THE CRIME FOR WHICH THE DEFENDANT WAS CONVICTED;**

Commentary. Because racial bias may enter the capital punishment process, it is important for the Maryland Court of Appeals to have the ability to consider this during the direct appeal. Under the current language, an argument could be made that the consideration of the possible influence of race could be included under "any other arbitrary factor," but because this issue is of such importance, this Task Force recommends that the possible influence of race be explicitly stated as a consideration of the Court.

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[63]An example of such a case could be a homicide committed by a member of the Ku Klux Klan where the race of the victim and the race of the defendant could bear some importance.

RECOMMENDATION 6: Victim/Survivor Issues. This Task Force recommends that the personal representative, guardian, or committee, or such family members as may be necessary of a homicide victim be allowed to add an appendix to the trial judge report regarding the case at any time.

Commentary. The victim and survivors of a homicide often become lost in the criminal judicial process. A majority of the Task Force members believe that the victim's voice should be heard. To allow the victim's voice to be heard, those who best knew the victim the best should be able to update the information regarding the victim throughout the process. In this way, the survivors will not feel re-victimized because of the system.

Several members of the Task Force voiced a minority view that in this instance, the proposed modification would be violative of a defendant's due process rights and could possibly hinder an accused from obtaining a fair and impartial sentence.

RECOMMENDATION 7: Further Study. The Task Force recommends that the examination of the fair imposition of capital punishment in Maryland continue. Specifically, the Task Force recommends that a future study be directed by the Court of Appeals with collaboration of the Governor, Legislature, State Bar and the public with a specific focus on obtaining quantitative, qualitative and anecdotal data about potential causes of racial disparity in the imposition of capital punishment in Maryland. It is further recommended that a uniform system of data collection be created in order to improve the accuracy of the study.

Commentary. There are no simple explanations for the racial disparities which exist in the imposition of capital punishment in Maryland. Racial issues are virtually impossible to analyze by empirical data alone. Surveys of public perceptions about how minorities are treated could be valuable in evaluating this issue. Anecdotal evidence could be helpful. Ultimately, however, racial issues are most successfully examined by subjecting all three forms of data to public examination.

This Task Force concluded that there was insufficient time to conduct a definitive study on the issue of the capital punishment process because such a study would require an in-depth consideration of the criminal justice system. The scope of racial discrimination in the criminal justice system is broader than this Task Force's mandate in its Executive Order. Therefore, this Task Force was unable to produce a conclusive answer to the issue of the cause of racial disparity in the capital punishment process. The aforementioned recommendations offer the State some options, further study, however, is necessary.

Although simply compiling data cannot provide definitive answers to explain the causes of racial disparity, gathering such data is a necessary first step in the process. By studying reports from the eight states which have examined the issue of racial and ethnic bias in the courts, the Court of Appeals' task force can identify the areas upon which their data gathering studies should focus.

First, it is important to gather data on the racial and ethnic background of those who participate in the capital punishment process. This includes judges, attorneys, jury pool members, members of the actual juries selected, clerks, bailiffs, court reporters and law enforcement personnel. Data should also be compiled on the perceptions of how different racial groups view treatment of minorities in the capital punishment process. Finally, anecdotal data about specific examples of how minorities are treated within the process should be included.

Task Force members discussed the probability that the causes of racial disparity in the imposition of capital punishment do not begin with the commission of a capital offense. In fact, there can be many societal factors beyond the criminal justice system that contribute to the present racial disparity. Although it may be impossible to study every potential cause of racial bias, the Task Force believes that examining certain areas within the over all criminal justice system is essential to informed public debate. These specific areas are: treatment of minorities in the juvenile justice system; arrest practices of law enforcement personnel regarding minorities; detention of minority defendants at both the pretrial and pre-sentencing stages of the process; whether minority defendants are overcharged by prosecutors as compared to similarly situated white defendants; how judges sentence minority defendants as compared to similarly situated white defendants; the jury selection process; and treatment of minority victims and their family members.

The type of study suggested by the Task Force will take at least one year to complete. Based upon the other studies, the Court of Appeals should be the governmental institution to conduct this study.[64] Funding should be provided for a full time project director and a technical support staff. Funding should also be available to conduct public hearings, and quantitative and qualitative surveys.

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[64]It is important to note that the state reports on racial and ethnic bias also discussed the existence of two national organizations that are attempting to eliminate racial and ethnic bias in the courts: the National Consortium of Task Forces and Commissions of Racial and Ethnic Bias in the Courts, and the National Center for State Courts. The National Center for State Courts held its First National Conference on Eliminating Racial and Ethnic Bias in the Courts in March 1995. Obviously, these two organizations would be a valuable resource for examining the issues of racial disparity.

APPENDICES

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APPENDIX A

Executive Summary

On December 11, 1989, the Florida Supreme Court Racial and Ethnic Bias Study Commission was created to determine whether "race or ethnicity affects the dispensation of justice, either through explicit bias or unfairness implicit in the way the civil and criminal justice systems operate." The 27 members of the Commission have, through listening to extensive public testimony and conducting numerous empirical studies, attempted to meet the Court's challenge to develop "long term strategies" for eradicating any bias uncovered by their study.

One year ago today, Chief Justice Leander J. Shaw, Jr., a prime motivating force behind the Commission's original creation, convened the Supreme Court in ceremonial session to receive the first part of the Commission's final report. Addressing concerns in the three areas of law enforcement, juvenile justice, and judicial system work force, the Commission's first report prompted the passage of legislation and the implementation of other key efforts throughout the State designed to effect meaningful, necessary change.

This second and final report of the Commission addresses the disproportionate number of minorities in the criminal justice system and the lack of minority presence within the legal profession. As distinct as these two issues may appear, they are inexorably linked, with several consequences.

First, the underrepresentation of minorities as attorneys and judges serves to perpetuate a system which is, through institutional policies or individual practices, unfair and insensitive to individuals of color in the ways described in the Commission's first report. Second, the underrepresentation of minorities as attorneys deprives the public debate of voices which speak with conviction about the social consequences of loosing so many minorities to imprisonment.

Third, the dearth of minority attorneys deepens despair among young minorities who have no personal association with anyone who has become an attorney. Fourth, by threatening the withdrawal of the tacit "consent of the governed," the underrepresentation of minorities in positions of responsibility in the judicial system weakens the very system of ordered liberty upon which our democracy is based.

The current system — characterized by an abundance of minorities in positions of vulnerability and a dearth of minorities in positions of responsibility — disadvantages the individual and society as a whole. Both fairness to the individual and economic self-interest of the State mandate the need for fundamental reforms to eradicate the stain of racism from the garments of justice in Florida.

I. The Adult Criminal Justice System: Reclaiming Discarded Human Resources

A. The Impact of Language Barriers

1. Findings

- Fundamentally, the courts should be equally accessible to, and protective of, all persons, regardless of their ability to communicate in English. Interpreters should be made available to an individual for whom English is not the primary language at the first stage of the criminal process at which his or her liberty is at risk.
- Evidence in Florida suggests that the rights of non-English speaking defendants are systematically being compromised due to the lack of trained, qualified court interpreters.
- Many of Florida's judicial circuits do not have formal standards or criteria governing the training, certification, and use of court interpreters. The special needs of

linguistic minorities have not been adequately met by the present approach of leaving to individual judges or administrators the responsibility of eliminating the language barrier.

2. **Recommendations**

- The Florida Legislature should amend s. 90.606, Florida Statutes, to make clear that all non-English speaking criminal defendants have a right to a certified interpreter at all critical stages of the criminal prosecution. This would make such right co-extensive with the Sixth Amendment right to counsel in criminal cases.
- The courts, through promulgation of a rule of practice and procedure, should be required affirmatively to inquire, during first appearance, as to a criminal defendant's need for the services of an interpreter.
- The Florida Legislature should mandate and fund the development of a statewide training and certification program, to be administered through the Office of the State Courts Administrator. Once funded, OSCA should be encouraged to collaborate with the state university and community college systems to design a curriculum appropriate for pre- and post-certification education.
- OSCA should, through appropriate means, ensure the effective dissemination of information to all judges and court administrators regarding the availability and appropriate use of court interpretive, training, and certification services.

B. The Importance of Effective Pre-Trial Release Policies

1. Findings

- Testimonial evidence suggests that the constitutional presumption of non-financial pre-trial release for criminal defendants is not being effectuated in practice in Florida, and the presumption operates least of all in favor of lower income individuals, a disproportionate number of whom are minorities.
- Survey responses suggest that bail and pre-trial release decisions are being made on the basis of limited information and without full appreciation for the impact a defendant's financial condition has on his or her ability to be released pre-trial. The practical effect of the release decision-making process in Florida is that, all too often, it is the bailbondsman, not the presiding judge, who determines whether the defendant will be released pre-trial.
- Numerous studies and pervasive testimony document the critical link between pre-trial detention and case outcome. Defendants who are not released pre-trial are more likely to plead guilty and accept a plea bargain for the sole reason to get out of jail. Moreover, a defendant who is detained pre-trial is less able to aid in his or her own defense, adversely affecting the outcome of any criminal trial.
- Pre-trial services programs are in operation in only approximately half of Florida's counties, and those which do exist vary widely from site to site. Until recently,

there have been few attempts at information-sharing or collaboration among the various programs as to successful models or components. Even within individual jurisdictions, judges and administrators are often unfamiliar with their own program's practices and policies.

2. Recommendations

- The Florida Legislature should authorize and fund a project to compare the pre-trial release practices of several jurisdictions. The goals of the project should be to determine which types of pre-trial services programs best 1) enhance the judge's ability to make more equitable decisions as to pre-trial release; and 2) reduce the extent to which pre-trial detention is a function of income.
- The Education Conferences for Circuit and County Judges should offer continuing instruction as to the propriety and implications of judicial decisions concerning pre-trial release and bail. That instruction should emphasize the need to overcome cultural differences and stereotypes as to minority lifestyles when making bail decisions.
- The Chief Judge in each judicial circuit should ensure the effective dissemination of complete information regarding the pre-trial programs within that circuit.

C. Jury Selection

1. Finding

- The present system of selecting jurors through the list of registered voters does not result in ju-

ries which are racial and ethnic composites of the community.

2. **Recommendation**

- The Florida Legislature should further its resolve to ensure that jury composition accurately reflects the diversity of the population, allowing the community conscience to be voiced through the judicial process. At the earliest possible opportunity, the Legislature should take action to clarify the appropriate timetable necessary to implement the change in the jury source list, as provided in Senate Bill 678, or adopt other responsible measures designed to increase the diversity of juries in Florida.

D. Sentencing: A Call for a Change in Direction

1. The Need for Educational, Vocational, and Drug-Treatment Programs

a. Findings

- By 1994, 30% of all Black males between the ages of 18 and 34 will be incarcerated or under some form of state control.
- While African-American offenders account for 57.9% of all admissions for other offenses, they currently comprise over 71.2% of all drug offenders.
- The educational, vocational, and drug-treatment needs of Florida's offenders, particularly drug offenders, are not being met by the current correctional approach which places its funding priorities on merely warehousing these of-

fenders in the ever-expanding slew of prisons.

- Specific sentencing policies appear more to accentuate the disproportionate impact of current policies on the minority offender population than they do to effectively reduce crime.
- The racial composition of those individuals sentenced as habitual offenders reveals a wide disparity between Black and White offenders. In 1990-91, 73.6% of all habitual offenders admitted to prison were Black, even though Blacks represented approximately 60% of admissions for all crimes.
- As it moves in the direction of adapting its correctional philosophy to emphasize the provision of educational and vocational training and drug treatment, Florida must ensure that these programs are accessible and culturally sensitive to minority offenders.

b. Recommendations

- The Legislature should, through both statutory amendments and funding priorities, expand and strengthen the use of community-based programs, pre-trial intervention programs, and probation. All offenders in need of education, training, or drug treatment should be provided the same.
- The Legislature should adequately fund the literacy, educational, and vocational programs under the purview of the Correctional Education School Authority and PRIDE,

as well as the incarcerative drug-treatment programs provided by the Department of Corrections.

- The Legislature, through the joint efforts of the criminal justice and corrections committees of the House and Senate, as well as the Joint Task Force on Sentencing Practices and Prison Resources, should immediately undertake a review of those cases prosecuted under both mandatory minimum statutes and the "habitual offender" statute to determine the effect of race or ethnicity in their selection, processing, or ultimate disposition. To the extent that improper considerations are playing a role, the Legislature should repeal these statutes altogether.
- All criminal justice agencies should implement data-gathering methods with regard to Hispanics so that a more accurate and continuing assessment of the impact of criminal policies on Hispanics may be measured and monitored.
- The Legislature should re-examine its 1988 amendment to the Sentencing Guidelines, embodied in s. 921.001(5), Florida Statutes, and ensure, through the promulgation of criteria or otherwise, that a sentence of incarceration is not being imposed upon drug, nonviolent property, or other offenders who are more appropriate candidates for non-incarcerative sanctions.

- The Florida Legislature should require, as a condition of funding, that each State Attorney: a) promulgate effective criteria which ensure the fair and equal exposure of individuals to processing under mandatory minimum statutes; and b) annually submit a report to the legislative appropriations committees detailing the racial/ethnic composition of all individuals prosecuted under these statutes. To the extent that such reports reveal racial/ethnic disparities in the population of individuals who are prosecuted under these statutes, the Legislature should require a detailed justification for the impact of prosecutorial decision-making in this area.
- The Legislature should, through adequate funding of the Drug Punishment Act of 1990 and other appropriate methods, provide sufficient community-based sanctions for technical probation violators, with a strong educational, vocational, and treatment component.
- The Chief Judge in each circuit, as well as individual judges, should seek the implementation of alternative sentencing models, such as the "Drug Court" model in Dade County.
- The Departments of Corrections and Health and Rehabilitative Services should actively and concurrently monitor minority access to and success in

offender educational, vocational, and drug-treatment programs. Insofar as the programs are for training, those departments should collaborate with the Department of Labor and Employment Security. As part of that collaborative effort, each department should, through rule promulgation or other appropriate methods, ensure that educational, vocational, and drug program administrators apply fair and culturally sensitive screening and selection criteria for participation in their programs and exhibit cultural awareness in the administration of their programs.

2. **Capital Sentencing**

   a. **Findings**

   - The application of the death penalty in Florida is not colorblind, inasmuch as a criminal defendant in a capital case is, other things being equal, 3.4 times more likely to receive the death penalty if the victim is White than if the victim is an African-American.
   - Since 1972, 18% of all capital cases have involved a judicial override of a jury recommendation of life imprisonment. The discretionary authority of the judge to override a jury's recommendation of life opens up an additional window of opportunity for bias to enter into the capital sentencing decision. This discretion is too often influenced by public pressure for punishment and retribution.

- Society must intensify its efforts to address the underlying economic and social issues and conditions which contribute to the tragically high rate of incarceration of minorities on death row.

b. Recommendation

- The Florida Legislature should amend s. 921.141(3), Florida Statutes, to prohibit judges from imposing the death penalty in cases where the jury has recommended a sentence of life imprisonment.

II. Special Concern: The Experiences of Minority Women in the Judicial System

1. Findings

- Minority women comprise only 1% of Florida's judges and represent 6% of all judicial employees who work as part of the state court system. Significantly, within the non-judicial work force of the state court system, there are virtually no minority females in the upper level job classifications who are in positions of authority responsible for development of general administrative policy.
- No clear directives exist regarding the active recruitment, hiring, and promotion of minority women to address their underrepresentation in the judicial system.
- The overreliance on word-of-mouth advertisement of vacancies within the judicial system reduces the probability of a wide selection of minority women applicants, further contributing to the underrepresentation of minority women. Specifically, the practice

of selecting judges' own staff through personal referrals adversely affects minority women.

- Professional minority women, both as employees and attorneys within the judicial system, report that they are disproportionately assigned trivial or the least desirable work, while men are assigned the more important work.
- Minority women attorneys in both the public and private sectors are often on the receiving end of inappropriate and unprofessional comments, on the dual basis of their gender and race, from both judges and court personnel.
- Training opportunities for minority women in the judicial system, designed to improve their skills or enhance their opportunity for promotion, are limited.
- Minority women supervisors consistently report adverse practices which undermine their authority, including being given less responsibility and discretion in the supervision of their subordinates.

2. Recommendations

- The Commission continues to encourage the Supreme Court to develop, and the Florida Legislature to fund, an Office of Equal Employment Opportunity. Once developed, this office should ensure that clearly written policies, procedures, and goals for the recruitment, selection, promotion, and retention of minorities, including minority women, are established throughout all levels of the judicial system. An annual report should be submitted to the Chief Justice outlining progress, prob-

perform legal services for the State as its outside counsel.

- While state agencies spend significant sums of money every year to retain and utilize the services of private lawyers, they have not developed effective criteria by which to determine the selection of appropriate lawyers and firms to perform the State's work.
- As a large consumer of legal services, the State has the power to exercise its spending decisions in ways which would both help empower minority lawyers and law firms and promote diversity within majority-owned law firms.
- A widespread perception exists that minority lawyers do not receive an equitable share of fee-generating appointments by the courts.
- Minorities are underrepresented on the staff of The Florida Bar, especially in positions which influence policy.

2. Recommendations

- The Legislature should statutorily 1) ensure that minority lawyers and law firms are extended equal opportunities to perform legal services for the State; 2) require state agencies to make aggressive efforts to target and cultivate relationships with minority lawyers and law firms; 3) limit state contracts with majority-owned law firms only to those firms which themselves recruit, hire, promote, and retain minority attorneys; and 4) endorse "joint venturing" between majority and minority firms where necessary to achieve

the goal of full utilization of minority lawyers and firms.

- The Chief Judge in each circuit should initiate a review of the court appointments made by all judges within the circuit and, if necessary, adopt criteria designed to ensure the fair award of fee-generating court appointments.
- The Florida Bar should immediately adopt and implement an affirmative action plan which sets forth goals and timetables for the full utilization of minorities on its staff, especially in staff supervisory and leadership positions. The Board of Governors should actively monitor the plan's implementation and publish, on an annual basis, the results of the plan's implementation to the Florida Supreme Court and all members of the Bar.
- All voluntary bar associations should review their membership records and develop specific strategies, where necessary, aimed at increasing the collaboration among minority and non-minority attorneys in their affected localities.

B. Law Firm Hiring Practices: The Time for Real Commitment

1. Findings

- Minorities are significantly underrepresented in Florida's large law firms, particularly those not located in the Miami area. African-American attorneys represent less than 1.6% of attorneys in large firms both inside and outside the Miami area, a proportion even lower than the already depressed national average. Hispanics ac-

count for only 1.7% of attorneys employed by large firms outside Miami.

- The underrepresentation of minority attorneys in Florida's major law firms carries significant consequences for the development of public policy in the state, inasmuch as public leadership has traditionally been tapped from among attorneys in Florida's larger law firms.
- Very few Florida law firms recruit from law schools where the enrollment of minority students is traditionally high, thus bypassing one of the most logical and fertile sources of minority candidates.
- When making interviewing and hiring decisions, Florida law firms continue to weight most heavily the traditional factors of class rank and law school GPA. The exceptions made to these requirements are most frequently made in the cases of White males.
- Florida law firms consistently consider their summer associate programs as one of the primary sources of new associate hires. Yet, the increased number of minority summer associates in some parts of the state has not yet resulted in a commensurate increase of minorities entering as associates after graduation.
- Interactions between minority and non-minority lawyers continue to be characterized by tension, rancor, and humiliation indicative of racial conflict.

2. Recommendations

- The Florida Supreme Court should set in motion the amend-

ment of both the Code of Judicial Conduct and the Rules of Professional Conduct to proscribe and discipline conduct reflective of racial animus and to establish a professional and ethical obligation on the part of lawyers and law firms actively to recruit, hire, promote, and retain minorities.

- The Florida Chamber of Commerce, the Council of 100, and other business leaders should adopt, as the policy of businesses in Florida, the requirement that all law firms with which these businesses contract must demonstrate, as a prerequisite to being retained, the firm's commitment to recruit, hire, promote, and retain minority attorneys.
- Law firms should actively recruit from, and establish relationships with, law schools with high enrollment of minority law students.
- Law firms should increase cultural awareness and sensitivity at the interview stage by educating interviewers as to questions and behaviors that might be discriminatory or otherwise offensive to minority candidates and by including minority attorneys on interview, selection, and hiring teams.
- Law firms should review those factors which may be inhibiting minority participation in, and the utilization of minorities from, summer associate programs and adopt specific strategies designed to increase the participation and full-time utilization of minority summer associates.

- Law firms should broaden their recruiting and hiring criteria to weight measures of a candidate's ability in addition to GPA and class rank.
- Law firms should give serious consideration to participating in the Texas/Tulane Minority Clerkship Program, or any comparable program, which seeks to place first-year minority law students as summer associates, with the goal of expanding the range of criteria upon which the law firm may judge the likelihood of the student's ultimate success with the firm.
- The Florida Bar, through the active and ongoing assistance of its Committee on Equal Opportunities in the Profession, should develop, maintain, and disseminate a directory of practicing minority lawyers, noting the attorneys' location, area of practice, and career goals, to facilitate the lateral hiring of minority attorneys by Florida's major law firms.

C. Minorities in Law School: The Danger of Losing Ground

1. Findings

- Minority student enrollment in Florida's law schools has remained static over the past several years and does not appear to be increasing. African-American students are particularly underrepresented at 4.7% of the 1990-91 enrolled class.
- Because low enrollment of minority students is at least partially a consequence of the limited number of minority students applying to law school, increased attention

must be directed at the high school, community college, and undergraduate levels to expand the pool from which law school candidates may be drawn.

- Although all Florida law schools provide some form of financial assistance, these funds tend to be extremely limited and do not sufficiently address the needs of minority students.
- While minority students appear to graduate as often as do their White peers, they tend not to rank in the upper quartile as often due to, among other factors, lack of available mentors and financial strains.
- Minority students generally do not perceive law school placement offices as having the inclination or ability to help them obtain employment.
- Minorities are severely underrepresented on the faculties of Florida's law schools, comprising only seven percent of the full-time faculty. Hispanic and Asian individuals hold none of the tenured positions, even though 63% of all law degrees awarded to minorities in Florida are awarded to Hispanics.
- Although most law schools report dissatisfaction with the number of tenure-track minority faculty, none have defined specific goals for addressing this concern.

2. Recommendations

- Law schools should develop and implement a five-year plan containing specific goals for attaining minority representation within the student body which reflects

the level of minority representation among undergraduates.

- Law schools and their respective undergraduate institutions should develop cooperative minority recruitment programs. Recruitment programs should focus specifically on high schools with high minority enrollment, as well as community colleges and universities. All law schools should appoint a minority recruiter to assist in these efforts.
- The Florida Legislature should immediately and substantially increase funding for financial assistance to needy minorities applying to law school. In addition, law schools should continue diligently to seek further funding for such scholarships from the private sector. Research and teaching assistantships should also be made available.
- Law schools should, through the promulgation of an affirmative action plan, formally adopt and implement policies which reflect specific goals and strategies for recruiting, retaining, and advancing African-American, Hispanic, Native American, and Asian faculty.
- All law schools should develop a summer preparatory program for admitted first-year students with demonstrated academic need, building upon the excellent efforts of those Florida law schools which currently offer such a program.
- All law schools should continue to collaborate with the voluntary bar association in each locality to duplicate the "Professional Opportunities for Black Law Students

Program," instituted in Dade County through the efforts of the University of Miami Law School and the Dade County Bar Association, with the goal of expanding the employment potential of minority law students upon graduation.

- Law schools should increase efforts to provide students with appropriate mentors and should, through direct and indirect means, encourage and assist in the formation of peer support groups.
- All placement offices should seek to identify and develop relationships with law firms which have proven records of minority hiring, as well as those willing to give serious consideration to factors in addition to GPA and class rank.
- Placement offices should increase their efforts to reach minority students and graduates as early as possible in their placement efforts and should counsel students early as to the specialty areas of visiting firms.
- Law schools should aggressively seek the support and assistance of minority alumni as potential faculty candidate referrals, and should seek to increase the involvement of minority and nonminority practitioners and alumni in summer institutes, workshops, and internships, and as guest lecturers, mentors, and advisors. The active use of an intermediate or part-time status, with a commensurate level of compensation, is encouraged.

- The Florida Legislature should establish a fellowship fund to support an academic scholars program for minorities interested in law teaching and research, to be developed at one or more of Florida's law schools. A major goal of the program would be to assist minority attorneys currently practicing law in Florida to become faculty members at one of Florida's law schools. The endeavor should be a cooperative effort among the Board of Regents, The Florida Bar, the Florida Chapter of the National Bar Association, the Cuban American Bar Association, other voluntary bar associations, and law schools.
- Law schools should undertake a periodic review of their curricula to include course materials that will engender sensitivity to and understanding of different cultures. The schools should also give instruction on the lingering existence and effects of racial and ethnic bias in the courts, the judicial system, and the legal profession.
- The Board of Regents, the State Board of Community Colleges, and the Department of Education should continue aggressively to support the provision of responsible multi-cultural instruction to elementary, high school, community college, and undergraduate students.

D. Minority Performance on Florida's Bar Exam: Ensuring a Level Playing Field

1. Findings

- A stark disparity exists in the passage rates of White and Black candidates on Florida's Bar exam. Specifically, for the February 1991 administration, 74% of the White candidates passed the Florida and multistate portions of the exam, while only 39% of the Black candidates passed the exam. For the July administration, 76% of Whites passed, while only 46% of Blacks passed.
- Generally, the difference in performance between White and Black candidates is larger on the essay questions than on the multiple-choice questions.
- As between White and Black candidates with similar overall proficiency levels, over 10% of the Florida multiple-choice items showed a significant level of differential functioning against Black candidates. While this differential functioning does not necessarily indicate the presence of bias, it does raise serious concerns as to the possibility that cultural factors inherent in the exam are accounting for the disparity.
- A review of these items by a panel of linguistic and test-measurement specialists reflects that most items contained culturally stereotypic language or situations, or structural components, which may have disadvantaged minority candidates. The Bar exam is no place for the portrayal of minorities in stereotypes or cultural sit-

uations which needlessly burden the examination process.

- Moreover, a review of the entire exam showed that some questions have technical, language, and/or structural problems which, while possibly affecting the performance of all candidates, may carry a greater impact for minority candidates. Adjustment of the items to eliminate these flaws would be consistent with the Board's item-writing guidelines and could be done without sacrificing the overall integrity of the exam.
- More than two-thirds of the surveyed Black candidates felt that their law school coursework did not prepare them for the Bar exam generally, and 91% indicated that the tests they took in law school did not prepare them for the multiple-choice items on the Bar exam.

2. Recommendations

- The Florida Board of Bar Examiners should immediately review those questions identified in this report as performing differentially between White and Black candidates and revise or eliminate the questions for which the language, situations, or inherent structural components of the questions are most likely accounting for the disparate performance.
- The Florida Board of Bar Examiners should obtain racial/ethnic information on candidates for the Bar exam so that performance levels of majority and minority candidates can be monitored on a continuing basis.

- The Florida Board of Bar Examiners should provide for the systematic review of all items, prior to their use, by experts who are familiar with the language issues and problems faced by minority candidates and non-native English speakers in order to detect potential cultural biases in the items themselves.
- The Florida Board of Bar Examiners should make the data described above available to Florida's law schools so that the schools may 1) assist the Bar Examiners in discerning what analytical skills the Bar exam should seek to assess and in crafting items which most appropriately measure those skills; and 2) adapt their teaching practices so as to produce lawyers who are capable of passing a Bar exam which fairly tests those analytical abilities.
- The Florida Board of Bar Examiners should also share the by-product of its analyses above with the licensing authorities for other professions so that those authorities may assess the presence of potential biases in all professional licensing exams presently being utilized in Florida.
- All Florida law schools, once provided with this report and further information from the Board of Bar Examiners as described above, should review their teaching practices and curricula to ensure that both are geared, as much as possible and consistent with the academic goals of both the school and legal education, to prepare students for the rigors of the Bar examination process.

- The Florida Board of Bar Examiners should ensure the inclusion of minorities among those individuals who develop both multiple-choice and essay questions for use in the Florida Bar exam.
- All Florida law schools should immediately consider and develop appropriate mechanisms designed to assist their students in passing the Bar exam. Possible mechanisms include: a) requiring that commercial Bar review courses, as a prerequisite to access to on-campus sales, provide scholarships to needy students to cover the cost of the review course; b) with assistance from public or private donors, providing direct funding to needy students for the purpose of taking a commercial Bar review course; and c) developing a supplemental Bar review program for needy students, which would focus on improving essay-writing and test-taking skills, with a heavy emphasis on individual performance.

Executive Summary

The Courts: "Where the injured fly for justice."

— *Aesop*

One year ago today, then Chief Justice Raymond Ehrlich issued an administrative order creating the Racial and Ethnic Bias Study Commission. The 27 members of the Commission have spent the last year listening to the people of Florida and conducting empirical studies in an effort to address the question of whether racial or ethnic considerations adversely affect the dispensation of justice to minority Floridians.

The initial report of the Commission addresses these aspects of the justice system which, if operated unfairly, could adversely impair the basic liberties of disadvantaged minorities: the dearth of minorities who serve as judges, bailiffs, managers in police organizations, and administrators in Florida's courthouses; the treatment accorded minorities by law enforcement organizations; and the processing of delinquency cases of minority juvenile offenders.

I. The Judicial System Work Force: Its Complexion, Demeanor And Dialect

A. Findings

- Minorities are significantly underrepresented as judges in Florida in proportion to their numbers in the general population, comprising only 5.5% of the 723 judges in the state.
- Minority females, at 1% of all judges, are particularly scarce on Florida's bench.
- Minorities are virtually absent from the higher courts, serving primarily (92.5%) on the trial and limited jurisdiction courts. Four of the five district courts have no minority judges at all.

- The judicial appointive system, as currently structured and implemented, has failed to achieve racial and ethnic diversity, in large measure because minorities are not included in the selection process and are underrepresented in the pool from which judges are drawn. Only 5.6% and 3.6% of the membership of the judicial nominating commissions are, respectively, African-American and Hispanic. Almost half of the commissions have no minority members at all.
- While over 63% of the membership of the judicial nominating commissions are attorneys, not a single African-American attorney serves as a member of any of the 22 judicial nominating commissions responding to the Commission's survey. African-Americans hold only lay appointments.
- Judicial nominating commissions with no minority members are less successful in obtaining minority applicants for judicial vacancies than commissions which include minority members.
- The election process (for trial court judges) has not yielded significant representation of minorities in the judiciary in Florida.
- As is the case with judges, minorities are underrepresented in the work force of Florida's State Court System, constituting only 9% of all state court employees. This is particularly true as it relates to positions of greater responsibility and authority.
- No African-American attorneys are employed in attorney positions by the Supreme Court.
- No African-American attorneys or non-attorney professionals are employed by any district court of appeal.
- African-Americans, Hispanics, and Native Americans continue to be poorly rep-

resented generally in the work force of the circuit and county courts, as officials and administrators in the Clerk of the Circuit Courts' offices, some state attorneys' offices, and certain court-related executive agencies.

B. Recommendations

- The Florida Legislature should mandate representative minority attorney and citizen membership on each judicial nominating commission in Florida.
- The Florida Supreme Court should instruct each judicial nominating commission to provide explicitly, by rule, that racial and ethnic diversity of Florida's bench is a desirable objective and, as such, an element which shall be considered by all judicial nominating commissions when making recommendations on appointments to the bench.
- Each judicial nominating commission should, by rule, establish a model plan for recruiting qualified minority candidates for judicial appointment, updating the plan as appropriate to account for experience gained in the recruitment process. Particular attention should be paid to the recruitment of minority females for judicial appointment. Judicial nominating commissions should be required to provide to the Governor a statement certifying compliance with the commission's minority recruitment plan when submitting recommendations for judicial appointments. In addition, the Florida Supreme Court should require the Judicial Nominating Procedures Committee of the Florida Bar and each judicial nominating commission to submit an annual report detailing each commission's record of increasing the

number of minorities recommended for appointment to Florida's bench.

- The Governor should establish, as a top priority, the increase of minorities among his appointments to Florida's bench.
- The Florida Bar, through the decisions of its Board of Governors and the efforts of its Judicial Nominating Procedures Committee, should expressly establish, as a top priority, the increase of minority representation among the Bar's appointees to the judicial nominating commissions.
- The Florida Legislature should, in connection with its preparation for the upcoming session on reapportionment, fund and conduct computer-assisted analyses of the feasibility of devising judicial election subdistricts which would tend to increase minority representation while avoiding fragmentation and parochialism. Once concrete examples of the configuration of subdistricts are devised, the State will be in a better position to determine whether a change to single-member districts or subdistricts should be implemented through an amendment to the State Constitution.
- The Florida Supreme Court should adopt, by rule, an affirmative action plan for the Florida State Court System, to be binding upon and administered by all components of the State Court System. Under the authority provided by section 25.382, Florida Statutes, the Chief Justice of the Florida Supreme Court should ensure system-wide compliance with the affirmative action plan.
- The Florida Supreme Court should establish an Office of Equal Employment Opportunity and appoint a director experienced in personnel matters and in

implementing affirmative actions programs. The Director should be responsible for monitoring the implementation of an Affirmative Action plan that includes the recruitment of all court personnel, including judicial law clerks. The Office should be provided with sufficient funding and support staff to carry out its assigned duties.

- All chief judges, managers, and personnel officers within the State Court System should receive training regarding the Court's Affirmative Action Plan. In addition, the Florida Supreme Court and each court and office within the State Court System should develop specialized programs for managers, to include incentive and awards programs for those who develop and implement successful, creative, and innovative minority hiring, promotion, and training programs pursuant to the Affirmative Action Plan.
- The Chief Justice of the Florida Supreme Court should promulgate, by order, a grievance procedure for the Florida State Court System, to be utilized by any employee of the State Court System who believes he or she has been the subject of an employment decision improperly influenced by race or ethnicity.
- The Legislature should mandate that each Clerk of the Court develop and implement an affirmative action plan, which shall establish annual goals for ensuring full utilization of minorities in the work force of county-level court-related employees. These plans should be submitted to and approved by the Director of the Office of Equal Employment Opportunity of the State Court System. The approval should be certified to the appropriations committees of both houses of the Legislature and to the executive branch officials who can ensure that state revenues normally trans-

ferred to counties may be withheld for non-approval of or non-compliance with the locally adopted affirmative action plans.

- The Governor, as well as the Governor and Cabinet, should, by executive order or resolution, immediately require the executive agencies under their direction and having responsibilities relating to the judicial system to report on compliance with the provisions of the agency's affirmative action plan developed pursuant to section 110.112, Florida Statutes. Furthermore, the Governor should request from the Justice Administrative Commission a report on the compliance by state attorneys and public defenders with their affirmative action plans developed pursuant to section 110.112, Florida Statutes.

II. Law Enforcement Interaction With Minorities

A. Findings

- Extensive evidence suggests that minorities are too often subjected to the threat of abuse and brutality by law enforcement organizations. Survey responses suggest that African-Americans and Hispanic individuals are stopped and detained more frequently than a non-minority would be under similar circumstances and are treated with less respect and more unnecessary force than are their white counterparts.
- Relationships between police officers and minorities are adversely affected by cultural differences and misunderstandings.
- African-Americans and Hispanics are underrepresented in Florida's police agencies, representing, respectively, only 8.7% and 5.6% of all law enforce-

ment officers. Minorities appear to be losing ground in their representation in police agencies.

- Minority police officers tend to receive fewer promotions than similarly situated whites and are disproportionately underrepresented in the management and supervisory ranks of police organizations in Florida.
- Current training is not sufficient to demonstrate the state's commitment to ensuring appropriate and culturally-sensitive law enforcement action toward racial and ethnic minorities.

B. Recommendations

- Law enforcement organizations should adopt plans to recruit, hire, retain, and promote minorities.
- The Florida Department of Law Enforcement and local law enforcement organizations should develop a minority career development program.
- The Legislature should create and fund a new division within the Attorney General's Office to be called the "Civil Rights Division." This division would be charged with the authority and responsibility to bring injunctive and compensatory suits against individuals and agencies, including law enforcement agencies, which engage in harassment or other inappropriate conduct on the basis of race or ethnicity.
- The Legislature should mandate that each law enforcement agency adopt a policy which regulates the use of force and domination on stops, recognizes that excessive force is an impediment to stable and effective law enforcement, and provides disciplinary action for violations of the policy.

- The Legislature should review the present structure of managing and funding the forty centers which presently provide training to law enforcement officers throughout the state and determine whether program offerings can be improved through closer collaboration among the centers.
- The Legislature should, by statute, expand the responsibilities of the recently created "Criminal Justice Executive Institute" to include the design and implementation of research projects which will combine the talents of community colleges and universities toward the end of improving law enforcement efforts with regard to the minority community.
- The Legislature should amend Chapter 943, Florida Statutes, to mandate the following improvements to law enforcement training in Florida:

  a. cultural representation among police instructors;

  b. development of a "train the trainer" curriculum for Florida's law enforcement instructors and certification of all instructors by attending "train the trainer" classes, especially on racial and ethnic bias-related topics;

  c. specialized training for internal affairs officers in the area of ensuring equality and fairness in the investigation of internal affairs complaints;

  d. an increase in the number of hours designated for training on ethnic and cultural groups;

  e. integration of concepts relating to racial and ethnic bias into other courses in the Criminal Justice Standards and Training curriculum;

  f. reclassification of racial and ethnic relations topics as "proficiency" areas, subject to serious standardized testing;

g. instruction in cross-cultural awareness and communications for Field Training Officers;

h. the development of standardized, uniform, specific, and culturally sensitive lesson plans and instructors' guides in high risk/critical task areas identified as important because of their effect upon the minority community, as well as the monitoring and inspection of the classes covering these areas;

i. the updating of videotapes and other materials used in race and ethnicity-related training;

j. the initiation of community interaction sessions at each training center through interaction components in the training classes; and

k. for chief executives, including sheriffs and police chiefs, training in areas relating to racial, ethnic and cultural awareness.

III. Juvenile Justice: The Need for Further Reform

A. Findings

- Minority juveniles are being treated more harshly than non-minority juveniles at almost all stages of the juvenile justice system, including: arrest; referral for formal processing; transfer to the adult criminal justice system; secure detention prior to adjudication; and adjudication and commitment to traditional state-run facilities.
- Opportunities for informal processing and diversion are not equally accessible to minority juveniles. The deeper the penetration of the juvenile justice system towards "deep-end" commitment, the greater the overrepresentation of minority juveniles.

- The differential treatment of minority juveniles results, at least in part, from racial and ethnic bias on the part of enough individual police officers, intake workers, prosecutors, and judges, to make the system operate as if it intended to discriminate against minorities. It results as well from bias in institutional policies, structures, and practices.
- Initiatives to eliminate disparities based on race and ethnicity must extend beyond the immediate crisis of harsh treatment of people who are in trouble today, to emphasize those more recently born who will be in even greater trouble tomorrow. Long-term strategies should involve improvements in education, income levels, employment training, economic development, health care, and the host of related considerations needed to elevate the status of minorities to true equality in society.

B. Recommendations

- The Legislature should amend Chapter 39.023, Florida Statutes, to mandate minority representation among the membership of the seven-member Commission on Juvenile Justice.
- Police practices, including field adjustments, relating to law enforcement interaction with juveniles should be recorded for supervisory review and monitoring to determine whether and how race or ethnicity has entered into arrest and disposition decisions by Florida's law enforcement personnel.
- The State should mandate the establishment of procedures, in each of the agencies comprising the juvenile justice system, to encourage and provide means for reporting, investigating, and responding to professionals whose

decisions appear to have been influenced by racial or ethnic bias.

- Policies and practices of the Department of Health and Rehabilitative Services should be altered so that youths referred to intake are not rendered ineligible for diversion programs because their parents or guardians (a) cannot be contacted, (b) are contacted but are unable to be present for an intake interview, or (c) exhibit attitudes and styles of behavior that are perceived as uncooperative or unfamiliar to intake staff.
- To determine the necessity of 1) detention versus prehearing release, and 2) secure detention versus home detention, DHRS should promulgate criteria which are sensitive to racial, cultural, and ethnic differences in family structure and styles of childrearing and supervision.
- In situations where persons with economic resources (e.g., income or insurance benefits) commonly arrange for private care outside of the juvenile justice system — i.e., for first offenders, and for those who engage in minor forms of misbehavior — treatment services of equal quality should be made available outside of the juvenile justice system to serve the poor, especially poor minority youths.
- The Legislature should amend Chapter 39.024(2), Florida Statutes, to mandate minority representation among the membership of the 17-member Juvenile Justice Standards and Training Council.
- The Florida Legislature should mandate the development of a thorough race, ethnic, and cultural diversity curriculum which personnel at every level in Florida's juvenile justice system should be required to complete through continuing education credits. The curriculum should emphasize facts and myths about

racial and ethnic minorities and the e
fect of bias in justice processing.

- The State, through all appropriate ager
cies including, but not limited to, th
Department of Health and Rehabilita
tive Services, the Department of Educa
tion, the State Court System, Stat
Attorneys, and Public Defenders, shoul
actively support, through financial an
other means, the establishment and ex
tension of local community program
and efforts aimed specifically at address
ing the needs of Florida's minorit
juveniles.

EXECUTIVE SUMMARY

In 1990, the Joint Committee on Judicial Administration in the District of Columbia Courts established the Task Force on Gender Bias and the Task Force on Racial and Ethnic Bias in the Courts. The Task Forces were charged with the responsibility of examining the Courts to determine the extent to which gender, racial or ethnic biases were perceived or found and with making recommendations to reduce or eliminate them. Members of the Task Forces were drawn from the judiciary, the courts, the legal profession and the community. Members of the Task Forces have a broad range of experiences with the court system and the community. An Executive/Research Office was funded by the Courts to provide the technical assistance essential to conduct the research and analysis of the data collected. The Courts provided the Task Forces with secretarial and administrative support, including access to data bases and research it had previously conducted.

The Task Forces began their work in September 1990. In March 1991 they produced an Interim Report describing how they functioned and the studies planned. Originally, the Task Forces were directed to complete the work and produce a final report by October, 1991. This date was extended to allow for the completion of the studies. As will be discerned from the report, meaningful studies required the Task Forces to determine the areas to study, plan and develop research techniques and other methods to achieve their objectives, collect and analyze the data and information gathered, and develop and approve a final report. The Task Forces found that this ambitious undertaking could not be accomplished within one year and that even with almost two years on the project, there are other important areas which should be examined when time and resources of the Courts permit. Therefore, the Task Forces include in this report recommendations for future study and investigation in certain areas.

This summary of the Final Report of the Task Forces describes their studies, findings, conclusions and recommendations. The body of the Report sets out in detail the supporting data. The Appendices include copies of all survey instruments and summaries of responses.

There are obvious dangers in attempting to summarize a report of this length. Not all findings or the reasons for them can be mentioned if repetition is to be avoided. Therefore, some recommendations may appear out of context. The Task Forces urge the reader to view this Summary as an introduction and guide to the Report rather than a substitute for a complete review of it.

The Task Forces studied similar subjects. The Task Force on Racial and Ethnic Bias examined the following areas:

- court employment practices;
- treatment of participants during litigation;
- attorney disciplinary proceedings;
- demographic composition of court-appointed committees; and
- court contracting and procurement practices.

The Task Force on Gender Bias investigated the following areas:

- issues in substantive civil and criminal law;
- issues affecting family law;
- court employment practices;
- women in the judiciary;
- treatment of participants during litigation; and
- court appointments of counsel to criminal cases.

The Task Forces were concerned with discovering how the courts are perceived by the persons who work within the system and who participate in it in some way. The Task Forces also wanted to determine if perceptions and experiences were supported by statistical evidence. As a result, where feasible, each area was studied from a variety of perspectives: perceptions and experiences of individuals obtained through testimony[1] at public hearings, participation in organized small group discussions, individual interviews, or correspondence with the Task Force; perceptions of groups obtained through mail surveys; and statistical data obtained through court records.

The Task Forces operated independently for the most part. However, one of the most energizing and successful activities was a jointly sponsored conference held at Howard University Law School on Saturday, June 15, 1991. Over one hundred people attended, including local community, legal and political leaders, members of the judiciary, and court employees. Workshops were conducted by each committee of the two Task Forces, with the view toward ascertaining the views of the community on the issues addressed. Chief Judge Judith W. Rogers of the D.C. Court of Appeals and Chief Judge Fred B. Ugast of the Superior Court attended the conference, and each made remarks at the closing session. Perhaps the best measure of the success of this conference can be found in the chief complaint raised in the evaluation forms completed by participants -- that the conference, held on a beautiful, sunny, Saturday, was too short to permit full discussion and analysis of the issues!

TASK FORCE ON RACIAL AND ETHNIC BIAS

PERSONNEL

Over an extended period the courts have received complaints asserting racial and ethnic discrimination with respect to the employment practices of the District of Columbia Courts. This Task Force was part of a continuing effort to address concerns expressed over the years, as well as newer ones which have evolved from a changing community. Members of the Task Force quickly recognized that personnel practices affecting the employees of the courts warranted immediate attention.

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[1]This term is used colloquially, not in the legal sense of having been sworn in as a witness is in a court proceeding.

The Task Force's first activity was an open forum for employees held in November 1990. Using the information obtained at the forum, and from other sources, the Task Force conducted a survey of all employees and judicial officers to determine perceptions of bias and the extent to which problems identified at the forum were manifest in the courts. In June, the committee responsible for studying personnel matters conducted a workshop at the Joint Task Forces' Conference held at Howard. The Task Force analyzed the data from the surveys, the testimony (written and oral) from the forum and conference, and demographic data on employment provided by the Courts to evaluate whether there was racial and ethnic bias manifest in the personnel policies and practices of the courts.[2]

The Task Force concluded that the courts should address the following key issues:

- There is a strong perception among a substantial minority of employees that hiring and promotional decisions are or may be racially biased. Although this perception does not appear to be supported by the overall demographic data, personnel policies do not appear to be sufficiently well-defined, and therefore lend themselves to perceived or actual bias.

- Almost one-half the workforce is composed of Black women. Although there are a number of Black women in positions of authority, Black women remain substantially underrepresented in the upper salary level positions in the courts.

- There is a critical need to increase the proportion of Hispanic employees throughout the courts, and especially in such areas as probation, where the lack of Spanish-speaking employees affects the ability of the Courts to serve an increasing non-English speaking Hispanic population.

- Most employees are unaware of the existence of the Equal Employment Opportunity Office, and very few employees utilize EEO procedures for resolving complaints of racial or ethnic bias.

The Task Force makes the following recommendations:

Racial Minorities and Management Issues in General

1. Although many problems identified by the Task Force are common to large organizations, some hiring and promotional practices have been and/or are

[2]The Task Force did not study individual case histories, although it received testimony from a number of present and former employees that provided examples of problems they perceived. Rather, it sought to determine through a written survey of all employees (1) if the testimony from individuals reflected the experiences and beliefs of employees more generally; (2) if there were patterns to the experiences being reported; and (3) if personnel decisions were infected with racial or ethnic bias.

conducted currently in such a way as to create the appearance, if not the fact, of racial and ethnic discrimination. The Court's personnel management lacks effective safeguards to preclude individual racial or ethnic bias from infecting or appearing to infect personnel decisions.

2. Hiring and promotion practices should be reviewed closely.

3. Black women are underrepresented in upper grade levels, although the pattern of promotions indicates some success toward resolving this problem.

4. There appears to be a lack of consistent and clear policies for promotions. This encourages the perception that Blacks and other minorities are not treated fairly by supervisors and other management personnel. While many employees have grievances, the survey data suggests that non-White employees feel the most alienated and most subject to racial discrimination.

5. The EEO office is not viewed as an important part of the Courts – most employees do not appear to know that it exists, and therefore it is not seen as a means of protecting employees from racial and ethnic discrimination. Thought should be given to making this office more accessible.

6. Communication between employees and management needs improvement. Lack of ability to communicate concerns without fear of reprisal results in employee dissatisfaction and alienation.

7. The current orientation program does not adequately inform new employees of court procedures. There is no simple, accessible description of personnel policies. This problem should be addressed.

8. There has been no organized management training with particular regard to racial and ethnic employment issues, for current or new managers.[3]

9. There is a need for multi-cultural training for managers and employees.

10. A mechanism should be established immediately to review personnel policies in the divisions identified in the Report and to continue such review throughout the system.

Cultural and Linguistic Minorities

1. The Courts over the years have failed to keep up with the growth of the Hispanic community, and, as a result, lack the staff and facilities to provide adequate services to non-English speaking Hispanic litigants and defendants.

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[3]The Task Force understands that such a program is being developed.

2. There appear to be substantially fewer employees in the Courts identified as Hispanic than there are Hispanics in the general population, and this imbalance has had an adverse impact on the Courts and their ability to serve the Hispanic population.

3. There is a need to increase the number of employees who speak Spanish, and this need is most acute in the Probation Department and at the Information desk.

4. The Courts should affirmatively seek out members of the Hispanic community and bilingual members of other racial and ethnic groups to adequately serve the non-English speaking community and to alleviate the burden placed on the Courts' limited number of employees who are bilingual.

LITIGATION

Charged with the broad responsibility of studying the entire litigation process, the Task Force subcommittee on litigation selected judicial conduct as its initial area of inquiry. Included within the concept of judicial conduct were action, or lack of action, of judicial officers and conduct they permit in the arena they control -- the courtroom. Although the Task Force had hoped to address substantive legal issues in greater depth, time and resources would not permit it.

The Task Force engaged in various research activities to determine if there is racial or ethnic bias in litigation, including: meetings for minority bar associations, a written survey of courtroom clerks and court reporters, a written survey of jurors, and a workshop at the Joint Task Forces Conference. The Task Force felt that the data it collected was too limited to draw broad conclusions. However, based on an assessment of the data, the Task Force made the following suggestions and recommendations:

1. Judicial education should include on a regular basis efforts to help judges and commissioners identify, understand, and eliminate, racial and ethnic bias.

2. Continuing mechanisms should be established to enable communication and discussion between the Bar and the Courts regarding concerns related to racial and ethnic bias in the litigation process.

3. Continuing mechanisms should be established to enable the Court to receive input from members of the community about problems of racial and ethnic bias in the litigation process.

4. The D.C. Courts should focus particular attention on some specific problems of non-English speaking persons in the litigation process. In particular, information we received leads us to suggest at least the following:

   a. Court social services should take measures to insure that its staff has sufficient numbers of bilingual probation officers to enable communication

with probationers and participation by non-English speaking probationers in all programs available to English speaking probationers.

b. While the Court appears to have an excellent office of interpreter servic which generally works well in the trial context, interpreter services ne to be provided in critical non-trial phases of the litigation process. F example, on the day following arrest, non-English speaking persons m be able to communicate with various court personnel and with th counsel. Until the court can provide bilingual counsel to all who neec at this phase of the criminal process, adequate interpreter services needed.

c. The Courts need to struggle, regardless of the difficulties, to devis system for provision of counsel who speak the language of the client. lack the information to make concrete suggestions beyond those advanc by individuals during our inquiries, such as: a certification system Spanish speaking counsel; a stand-in system which insures Span speaking counsel on the first day; enhanced recruitment efforts with private bar.

d. The Courts should investigate to what extent court personnel who come contact with non-English speaking persons at important junctures in litigation process need additional training to facilitate meaning communication.

COURT ACTIVITIES

This chapter deals with several areas in which the Courts interact with the public and Bar, specifically:

1. Court Appointed Advisory Committees
2. Court Contracting and Procurement
3. Attorney Disciplinary System
4. Collection of demographic data of Bar Members

The Task Force examined these areas to determine if the Courts are operating in a manner t encourages participation by all racial and ethnic groups.

As a preliminary matter, the Task Force determined that data on the racial and eth composition of the D.C. Bar was not collected, and that the lack of baseline data made difficult to determine whether or not the Courts are involving members of racial and eth minorities in court activities in proportion to their representation in the relevant community. T question of data collection was debated at a workshop conducted at the Joint Task Forc

Conference with a number of Bar leaders, which concluded that the unified Bar should be encouraged to establish procedures for collection of racial and ethnic data.

1. Court Appointed Advisory Committees

Lawyers participate in a wide range of committee activities and perform critical tasks for the entire court system. Membership on such committees not only gives an individual an opportunity to serve the community, but is also a recognition of a person's standing and reputation in the profession. These committees affect the administration of justice and reflect on the courts' commitment to serving the entire community. The Task Force examined the racial and ethnic composition of committees and the process by which members are appointed to committees.

The Task Force concluded that the following were some of the key issues:

- Both courts are committed to participation of minorities on court-appointed committees, but the lack of baseline data on membership in the Bar makes it difficult to assess how well the courts are doing in involving minorities in committees.

- Some committees, such as Landlord-Tenant and Probate, could benefit from the inclusion of non-lawyers, which would also increase the pool of members to include representatives from minority communities.

- There do not appear to be standard criteria and methods for appointment, which may have an adverse affect on the successful recruitment of non-white members to committees.

The Task Force makes the following recommendations:

1. The Task Force recommends that the stated desires of the Chief Judges to increase representation of minorities on court committees be expressed as a specific commitment by the District of Columbia Courts, perhaps by resolution of the Joint Committee.

2. To fulfill the above commitment, the Task Force recommends that the courts review their criteria for and methods of appointment to committees. If an effort to increase minority representation is to succeed, it might be advisable to explore some new avenues. For example,

   a. development of a more organized process of recruitment and development of criteria for diversifying membership in the committees, as the present system may rely too heavily on the willingness and ability of the respective committee chairs to recruit appointees for vacancies;

b. appointment of lawyers to some of the committees that are now composed only of judges;

c. appointment of lawyers not practicing in the D.C. courts but in government or business;

d. appointment of non-lawyers to some committees, as is the case with the Board on Professional Responsibility. Appointment of non-lawyers makes sense not only because good minority community activists would then be eligible for appointment, but also because these nonlawyers might provide a beneficial client perspective to such committees as Landlord/Tenant, Client Security Trust Fund, and Probate.

3. In addition, more detailed information regarding the racial and ethnic makeup c practitioners in the D.C. Courts should be obtained, e.g., relevant results of th 1990 census when available, and demographic data from the unified Ba (particularly data on practice in the D.C. Courts.) This information will assist th courts and the community in evaluating the effectiveness of its efforts to increas the level of minority presence on court committees.

4. Finally, the Task Force concludes that it would be appropriate for the chief judge to monitor more closely committee appointments and issue an annual report or the makeup of committees, steps taken during the past year to increase diversity problems encountered, and goals for the next year.

2. Court Contracting and Procurement

The Task Force investigated the level of participation of minority-owned businesses in contracts entered into by the District of Columbia Courts.[4] The proportion of minority contractors was compared with available data on minority participation in the private sector and the District government, and with the proportion of available contractors in the District.

The Court of Appeals and the Superior Court/Court System contract independently. The data provided to the Task Force by each of these entities for 1990 showed that 7.5% of contracts entered into by the Court of Appeals were with minority-owned contractors. The Superior Court and Court System entered into contracts with minority-owned contractors in 19% of their contracts for 1990. Both of these percentages were increases over the 1989 levels.

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[4]The Task Force studied contracts for non-capital improvements only, as contracts for capital improvements are handled by the Department of Public Works for the District of Columbia, pursuant to the District of Columbia Minority Contracting Act of 1976, as amended, D.C. Code Sec. 1-1141 et seq. (1987 Repl.) (the Minority Contracting Act). This act establishes a goal of 35% minority participation in District of Columbia government contracting, which is applicable to the Courts as well.

Based on its investigation, the Task Force makes the following recommendations:

1. A larger proportion of Superior Court procurement dollars goes to minority vendors than do gross sales receipts in the private sector business community. However, the Court of Appeals falls short of that benchmark. And neither court provides nearly as many opportunities for minority contractors as does the District of Columbia government. Thus, there is considerable room for improving minority participation in the Courts' contracting and procurement processes.

   The Task Force recommends that both Courts strive to increase minority participation to at least 30%.

2. The Courts should expand their access to and use of Hispanic, Asian and other minority vendors.[5]

   Sources for additional minority vendors include:

   a. The District of Columbia Chamber of Commerce;
   b. The District of Columbia Contractors Association;
   c. The District of Columbia Office of Latino Affairs;
   d. The United States Pan Asian Chamber of Commerce;
   e. The United States Small Business Administration's list of local firms classified as socially and economically disadvantaged by the Office of Minority Small Business and Capital Ownership Development.[6]

3. The Task Force finds that the Courts concentrate their business with minority vendors in service areas requiring manual labor (light construction, cleaning, maintenance, hauling, trash removal, carpet laying) or the provision of services to juveniles and other youth under court supervision (e.g., foster grandparents, and educational and other community-based resources).

   The Task Force recommends that the Courts actively seek to use minority-owned vendors for a greater variety of services, for example, in computer installation, software design, repair and installation of electronic equipment, technical assistance and training and other technical and hi-tech service areas.

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[5]The 1991 records for the Social Services Division indicate that the Superior Court is already attempting to follow this policy with regard to services provided to youth under court administration.

[6]The SBA presumes that "Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and other minorities, or any other individual found to be disadvantaged by the Administration" are socially and economically disadvantaged. 15 U.S.C. Sec. 637(a)(4)(A) (1970 ed.). Consequently, the SBA's listings will include numerous minority firms, many of which may be qualified to do technical and high-tech work.

The Task Force recommends that in implementing these recommendations, the Administrative Services Division for Superior Court and the Director of Administration for the Court of Appeals avoid extensive repeated use of the same minority businesses and attempt to give as much business to as many different minority-owned firms as possible.[7]

4. Finally, if the above recommendations fail to increase minority participation and provide greater diversity in participation by the end of 1992, the Courts should adopt a formal system for assuring greater minority participation, rather than continuing to rely on a "best efforts" policy.

3. Attorney Disciplinary System

Testimony presented to the Task Force indicates that there exists a widespread and persistent perception that the District of Columbia's disciplinary system for members of its Bar discriminates against minority practitioners and/or solo, or small firm, practitioners.[8]

The Task Force held a public forum on the subject, considered literature, formal papers, informal correspondence and telephoned comments addressing the question, interviewed individual attorneys with special concerns in the area, and conducted a demographic survey of 900 lawyers whose cases within the disciplinary process had been disposed of, in any fashion within the past two years.

The Task Force did not conclude, based on the data before it, that the system was discriminatory. However, the Task Force did conclude that in a number of areas, the system could be improved to help ensure that it is not in fact discriminatory against minorities, and makes the following recommendations:

1. That the study of alleged racial and ethnic bias in the District of Columbia disciplinary system be continued; that substantially more time and money be allocated to its pursuit, to enable a much deeper and broader inquiry; and that aggressive efforts be made to involve racial and ethnic minority members of the Bar in all of its facets, with inviolable guarantees of confidentiality and anonymity.

2. That steps be taken to ensure that Bar Counsel's determination whether to docket a particular complaint is even more anonymous or "blind" than it is now.

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[7]The records of the ASD indicate that it is already attempting to follow this policy.

[8]The perception is that minority practitioners tend to be solo practitioners or members of small firms disproportionately to their overall representation in the Bar, and as a result, are more likely to be adversely affected by a perceived tendency of the Office of Bar Counsel and the Court of Appeals to focus on practices that may be more common to solo practitioners or small firms.

more than one or two persons should have to know the identity of the attorney being complained against before that determination is made.

3. That data be collected, after the fact, on the race and ethnicity (as well as gender) of referrals made to Bar Counsel by judges of the D.C. Court of Appeals and the D.C. Superior Court, to determine whether referrals of such minorities are disproportionate to their number in the courts and, if so, why.[9]

4. That the Office of Bar Counsel be alerted to the reported perception that it moves more swiftly in cases involving white attorneys than in cases involving minority attorney and to the perception that it does not prosecute white attorneys as often as it does minority attorneys in the marginal cases, and directed to guard against any such practices.

5. That the Office of Bar Counsel consider whether the probable cause threshold now in use can be more clearly defined, and whether it can be raised -- without interfering with Bar Counsel's mandate -- in order to eliminate at the earliest stage those complaints which are clearly frivolous, hopelessly ambiguous or patently lacking in credibility.

6. That the Court of Appeals and the Board on Professional Responsibility consider establishing the position of ombudsman or mediator as an independent arm of the Board, or that they consider and investigate the utility of referring cases for mediation to the Superior Court's Multi-Door Division, or both.

7. That the Board on Professional Responsibility develop a mechanism by which it can provide greater oversight of the staff work in the Office of Bar Counsel, to the extent that it can do so consistent with the Board's role as a judicial body.

8. That Bar Counsel's staff be trained in the operation of a small general practice law firm, in the special problems facing minority practitioners, and in the day-to-day workings of the Superior Court, and that they also receive counseling in public or interpersonal relations, with particular emphasis on courtesy.

9. That the Board on Professional Responsibility make a concerted effort, including aggressive recruiting, to increase the representation of racial and ethnic minorities in the disciplinary system.

10. That the Court of Appeals and the Board on Professional Responsibility re-examine the penalties attached to various violations of the disciplinary code, to ensure their proportionality and overall fairness, and to allow for appropriate

[9] Of course, such a determination could not be made without baseline information about the racial and ethnic composition of the Bar and of those actually practicing in the District of Columbia courts.

consideration of the practicalities of small firm practice in determining the sanctions appropriate for such violations by small firm practitioners.

11. That the Court of Appeals and the Board on Professional Responsibility consider the use of fines, remedial courses and other alternatives to suspension for some disciplinary offenses.

12. That the District of Columbia Bar create and conduct courses on money management, office management and ethics for new lawyers (perhaps through the vehicle of a lawyer practice assistance committee, as has been recommended by the ABA Commission on Evaluation of Disciplinary Enforcement), and that area law schools be encouraged (or required) and assisted to offer such courses, too.

13. That the Court of Appeals authorize the District of Columbia Bar to institute random audits of trust accounts, require that trust accounts be kept in banks that will report overdrafts, and take other measures that will allow for meaningful and timely oversight of money entrusted to lawyers.

4. Collection of Demographic Data

In the course of its work, including in particular its examination of the Bar disciplinary system and court appointments, the Task Force on Racial and Ethnic Bias in the Courts determined that it would be useful to refer to statistical data on the racial and ethnic make-up of the Bar. However, the Task Force found that such information was not available. The Task Force therefore pursued several avenues of inquiry about the desirability and feasibility of having the Bar collect such data.

The Task Force conducted a workshop on this topic at the Joint Task Forces Conference held in June 1991 at Howard University. Leaders from the unified bar and from minority bar associations identified and discussed many issues associated with the collection and use of demographic data about attorneys, concluding that the Bar should collect such data. The Task Force contacted other members of the legal community, who also indicated their support for collection of this data.

The Task Force strongly recommends that the D.C. Bar conduct periodic voluntary demographic surveys of its membership, and that it take all reasonable steps to encourage its membership to provide the requested information.

TASK FORCE ON GENDER BIAS

The Task Force on Gender Bias developed a definition of gender bias to inform and assess its investigation. The definition chosen best reflected the goal of the Task Force to conduct broad inquiry while maintaining the integrity of the studies:

Gender bias exists:

- when people are denied rights or burdened with responsibilities on the basis of gender;
- when stereotypes about the proper behavior, relative worth and credibility of men and women are applied to people regardless of their individual situations;
- when men and women are treated differently in situations because of gender where gender should not make a difference; and
- when men or women are adversely affected by a legal rule, policy or practice that affects members of the opposite sex to a lesser degree or not at all.

Using this definition, the Task Force conducted its studies in four major areas: court administration; treatment of participants in the judicial system; criminal and civil law; and family law. These areas are further subdivided to address a broad range of issues which are summarized below under each of the four major subject areas.

COURT ADMINISTRATION

The District of Columbia Courts are subject to a variety of statutes prohibiting gender discrimination. The Courts' own personnel policies proscribe discrimination in employment on account of sex and express an institutional commitment to equal employment opportunity. These policies also state a commitment to "promot[ing] the full realization of equal employment opportunity by establishing and maintaining an affirmative action program with respect to personnel policies and practices in the employment, development, advancement, and treatment of employees." The Task Force attempted to determine the extent to which these policies and goals have been fulfilled with respect to gender. To this end, the Task Force examined the effects of personnel practices on court employees. The Task Force also attempted to assess the success women attorneys have had in achieving judicial office and the success women judges have had in obtaining positions of administrative responsibility.

The Task Force concluded that the most serious problems confronting court administrators are: (1) the relatively small number of women, particularly Black women, in upper salaried positions in the Superior Court and Court System; (2) indications that the courts may be under-utilizing the educational training of some of its women employees; and (3) indications that the D.C. Courts' mechanism for resolving complaints of sex discrimination needs to be publicized and strengthened.

The information upon which the Task Force relied for its findings, conclusions and recommendations consists of: (1) responses to a 41-question survey distributed to all employees and judicial officers; (2) comments of participants at a workshop of the Joint Task Force Conference, which addressed the question of sex discrimination in employment at the courts; (3)

workforce profiles of the District of Columbia Courts which are submitted annually to the District of Columbia Human Rights Office; (4) summaries of complaints provided by the District of Columbia Court's EEO office; (5) a textual review of the District of Columbia Courts' Personnel Policies and Procedures Manual; (6) information supplied by the District of Columbia Judicial Nominating Commission and the Committee on the Selection and Tenure of Hearing Commissioners; and (7) information supplied by the Superior Court regarding the assignment of associate judges of that court to positions of administrative responsibility. As a result of our studies the Task Force reached the conclusions and recommendations which appear in the Report and are summarized below.

1. Women employees, and especially Black women, are under-represented in the highest grade levels of the Superior Court/Court System as well as in the level of positions which form an important applicant pool for promotion to upper level positions.

2. Women are not under-represented in the highest grade levels of the District of Columbia Court of Appeals.

3. The number of women hired in recent years in professional and court administration positions signals an effort to move women into higher level positions.

4. While parity between the genders based on their proportional representation in the workforce is not essential, lack of parity over a period of time is a matter which should be addressed.

5. The Task Force recommends that the Joint Committee closely monitor promotions and appointments to vacancies and that the Executive Office, with the assistance of the EEO office, collect and maintain information concerning vacancies and the applicants for those vacancies, with periodic reports to the Joint Committee.

6. The Task Force recommends that the District of Columbia Courts develop an affirmative action program which includes specific efforts designed to address grade levels in which women, and in particular Black women, are under-represented.

7. The Task Force recommends that the Joint Committee on Judicial Administration review the Family Leave Policy to determine the feasibility of having its provisions explicitly state that, where appropriate, the employees of the District of Columbia Courts are entitled to the leave which is authorized by the District of Columbia Family and Medical Leave Act of 1990.

8. The perception that gender-based discrimination occurs exceeds the evidence reported. However, the extent and nature of any discrimination and the effectiveness of the mechanisms for resolving complaints is made more difficult

by lack of official definition of terms used by the EEO Office, such as "no reasonable cause to proceed" and "inquiry".

a. The District of Columbia Courts should ensure that its employees are aware of the existence and role of the EEO office, and the office should be strengthened. The Joint Committee on Judicial Administration should encourage the use of the EEO office by any employee who believes he or she has been subject to gender bias.

b. The Task Force recommends that the Joint Committee on Judicial Administration review terms used in the EEO process such as "no reasonable cause" and "inquiry" to determine if such terms should be defined in the Personnel Policy.

9. The Task Force recommends the development of a procedure for the collection and maintenance of statistical data regarding complaints of gender-based discrimination made to such agencies as the Commission on Judicial Disabilities and Tenure, Bar Counsel, and the Chief Judge of the Superior Court regarding Hearing Commissioners. The Task Force further recommends that such statistical data be preserved and made available for public scrutiny.

10. The District of Columbia Courts should further develop and conduct training and educational programs for its employees on issues relating to gender discrimination in the workplace.

11. The Task Force recommends that women judges have the opportunity to serve as presiding and deputy presiding judges in all divisions of the court. The Task Force also recommends that women judges continue to have the opportunity to serve on those committees which members of the judiciary consider most important.

TREATMENT OF PARTICIPANTS IN THE SYSTEM

The Task Force studied behavior in the court setting, to determine if participants were being treated in a stereotypical fashion regardless of their individual situation, and whether men and women are treated differently when gender should not matter. Included in the kinds of behavior studied were both verbal and non-verbal behavior, as well as such judicial decisions as appointment of attorneys to criminal and probate cases. Judges, commissioners, attorneys, litigants, and witnesses were included in the study.

The Task Force conducted a survey of attorneys, courtroom personnel, and judges and commissioners to elicit opinions about behavior and the stereotypes underlying the respondents' observations. In addition, it conducted a roundtable discussion at the Joint Task Forces' Conference in June 1991, and utilized information gathered by the committee on Civil and Criminal Law. For court appointments, the Task Force interviewed the Register of Wills and

conducted a statistical study of court appointments in criminal cases for a three month period in 1990.

The Task Force found that, in general, the District of Columbia Courts do not suffer from the kind of blatant or systemic behavior that results in bias against members of one gender, usually women. However, the D. C. Courts are not free from bias. The Task Force surveys revealed perceptions of behavior that the Task Force concludes can have an adverse impact on the ability of female attorneys to represent their clients, and on the ability of female witnesses and litigants to be heard fairly. In addition, experiences showing lack of sensitivity and bias against female attorneys or litigants in particular have been related to the Task Force.

Most, if not all, task forces on gender bias have examined the issue of what is appropriate behavior for professionals in the court setting. This task force is no exception. Behavior that appears innocent or even complimentary can have an adverse impact on litigants and professionals. The Task Force tested a number of hypotheses in this area and found that unprofessional, gender-based behavior occurs in our court system according to a substantial proportion of survey respondents.

There was general consensus in the focus groups on personal injury cases, employment discrimination cases, and criminal cases that overt sexism is not commonly experienced by attorneys in the District of Columbia Courts. The use of demeaning stereotypes in litigation was viewed generally as not very successful in this court system. Problems that were reported appeared to be more judge-specific than systemic.

The system for appointment of counsel in criminal cases does not appear to discriminate against female attorneys. The statistical study conducted by the Task Force indicated that women are appointed to major felony and felony cases in proportion to their representation in the pool of Criminal Justice Act attorneys.

The Task Force arrived at the following conclusions:

1. Gender bias exists in the D. C. Courts, but does not appear to be pervasive.

2. There are differences in the way men and women perceive treatment of women, with men consistently perceiving fewer differences than women.

3. The types of problems in courtroom conduct perceived by practitioners tend to be subtle rather than overt. Some examples include that:

    a. judges tend to assume that male attorneys are lead counsel in multi-attorney cases;

    b. judicial officers appear to interrupt female attorneys more than male attorneys during argument;

c. female attorneys and judicial officers are treated less professionally than males, for example by having comments directed at their appearance;

d. female witnesses may be asked to "speak up" although they are speaking in a normal voice.

4. There appears to be a general decline in the civility with which attorneys treat each other, as well as the way in which female attorneys are treated.

The Task Force makes the following recommendations:

1. The Joint Committee should issue a clear statement that eradication of gender bias within the court system must begin with the members of the bench.

2. The Courts should adopt a Court Rule on professional conduct of attorneys. Such a rule is necessary to ensure equal justice under law regardless of race, gender or economic status.

3. Judges should take responsibility for ensuring that conduct in their courtrooms is free of inappropriate external influences such as gender bias, and not place the entire burden on the person affected to object to the conduct.

4. The Courts should continue current judicial training programs that incorporate gender bias issues, and an educational program for judges and commissioners about the subtle issues reflecting gender bias in the courtroom should be conducted.

5. The Task Force encourages use of Judicial Tenure Commission for complaints about particular judges.

6. The D. C. Bar should develop training and educational programs incorporating sensitivity to the gender issues raised in this Report.

7. The law schools in the metropolitan Washington area should be encouraged to incorporate gender bias issues in their curricula.

8. The Task Force recommends that a statistical study be conducted of appointments of attorneys in Probate cases.

CIVIL AND CRIMINAL LAW

The Task Force examined specific areas in civil and criminal law to determine if there is gender bias in the formulation or application of these areas of the law. The Task Force found that gender bias is not widespread in the litigation of civil and criminal cases in the District of Columbia Courts. Rather, the District of Columbia is considered to be a progressive jurisdiction

by those who practice here. Appellate decisions in key areas reflect a gender neutrality. At t trial level, it appears that most judges do not tolerate overtly gender biased behavior.

In the area of criminal law, the Task Force examined whether men and women are treat differently based on their gender in sentencing, adult sexual assault cases, and "domesti assaults. In the area of civil law, the Task Force studied issues in personal injury litigation, a employment discrimination and sexual harassment cases. In addition, the Task Force examin the current Civil and Criminal Jury Instructions for gender bias in language.

The Task Force found that gender bias is not widespread in the litigation of civil a criminal cases in the District of Columbia Court of Appeals and Superior Court. However, t system is not free from problems. The broader issues of sexual stereotyping in the culture large affect the judicial process.

Areas for improvement in the Courts include the following:

- Both the Civil and Criminal Jury Instructions require extensive revision to remc gender-based language.

- There appear to be differences in the way cases involving rape by acquaintan are treated in comparison with cases involving rape by strangers, and in ar such as bail and sentencing in particular, the courts appear to consistently tr acquaintance rape as a less serious offense than other similar offenses.

- Similarly, it appears that there are differences in bail setting, and sentenc which result in lower bail and shorter sentences in cases involving dome violence than in other cases of similar severity;

- In wrongful death cases, it appears that awards in cases involving male chilc are higher than in cases involving female children.

- In personal injury cases, other factors being equal, males appear to receive hig awards for loss of future earning capacity than females, while females appea receive higher awards for disfigurement than males.

- In cases involving damages, most survey respondents with an opinion stated homemakers rarely or never recover the economic value of their lost service

Based on its examination of the various issues, the Task Force made the follov conclusions and recommendations:

Criminal Law

A. Youth Rehabilitation Act

1. The Task Force recommends that implementation of the consent decree in Hauser v. District of Columbia, CA 89-11625 (D.C. Sup. Ct. 1992), be monitored to assure that:

   a. Facilities and programs are provided pursuant to the Youth Rehabilitation Act for female defendants to ensure that treatment and rehabilitation opportunities are available for women under the Act.

   b. Judges and attorneys are informed of the available programs and facilities which are to be developed for women sentenced under the Youth Rehabilitation Act.

B. Adult Sentencing

The Task Force recommends that the Courts seek funds from outside organizations such as the National Center for State Courts or local Bar Associations to conduct a comprehensive statistical study of sentencing of male and female defendants. The study should determine and evaluate all variables used by the Court in setting sentences and the role, if any, that gender plays in sentencing decisions.

C. Rape and Sexual Assault

1. The District of Columbia Courts are among the most progressive in the way they handle rape cases in general, and "stranger rape" cases in particular. Rape victims are not singled out by case law or judges as less credible than victims of other crimes. Judges make an effort to protect the complainant from hostile or inappropriate questioning and to treat defendants in sexual assault cases similarly to defendants in other assault cases.

   The Task Force encourages the Courts to continue with this approach.

2. Although rape cases are heard on the major felony calendar, which accords them some priority, continuing efforts should be made to expedite these cases. The Task Force recommends that the Superior Court, through its Criminal Division, examine ways to speed up the trial dates for sexual assault cases, recognizing the constraints that resources place on the court.

3. There were some complaints by victims' representatives concerning the way both the Metropolitan Police Department and the U.S. Attorney's Office respond to rape victims.

The Task Force encourages these agencies to continue to review their policies and procedures in addition to the steps that have already been taken in response to this concern.

4. The language of the rape, carnal knowledge and seduction statutes are gender specific, and this leads to gender bias in application. The statutes should be made gender-neutral whenever appropriate.

5. There were complaints that the present carnal knowledge statute (statutory rape) can be applied unfairly to young men. The statutory scheme should be reviewed, and consideration given to requiring some minimum age differential between complainants and respondents. Reform in this area falls within the sphere of the legislature.

6. There is some basis to conclude that prosecutors, defense attorneys, jurors and judges treat "acquaintance rape" differently than they do "stranger rape". The Task Force is unable to conclude whether these differences are attributable to legitimate factual variables or to a bias against female victims based on gender.

Because the differences, (e.g., in sentencing and setting of bail) were so clearly reported in the survey, the Task Force recommends the Courts and Bar study "acquaintance" rape issues, for example through the use of workshops or seminars.

D. Domestic Violence

The Court should investigate:

1. the apparent high rate of dismissal of cases involving domestic violence;

2. the perception that bail in cases involving domestic violence is set at lower amounts than in other cases of similar severity; and

3. the perception that sentences in cases involving domestic violence are lower than in other types of cases of similar severity.

There should be monitoring and investigation into how prosecutors, defense attorneys, judges, juries and court personnel handle the increased numbers of domestic violence cases that are entering the criminal court system under the new mandatory arrest legislation.

E. Criminal Jury Instructions

Extensive revisions of the instructions are recommended. Either language should be gender neutral, or refer to the actual gender of the individual witness, expert, attorney

defendant, plaintiff, etc. Use of "male" terms to include "female" terms should be avoided, because the effect, whether intended or not, is exclusive, not inclusive.

Civil Law

A. Personal Injury Litigation

The Courts should adopt a jury instruction on "homemaker worth" to aid a plaintiff/victim/decedent who did not work outside of the home at the time of injury or death. This instruction should encompass such matters as the present value of services (cooking, cleaning, etc.), and such factors as costs the family incurs as a result of the loss (e.g., paid maid services; difference in value if the spouse must work only part-time; additional cost of transporting children; etc.).

B. Sexual Harassment and Employment Discrimination Litigation

1. The District of Columbia Courts and Bar should explore adopting rules of civility between lawyers as has been done in Illinois and Texas.

2. The Courts and Bar should consider the pros and cons of revising the law on sexual harassment to define certain acts or conduct as sexual harassment per se, rather than relying on the vague and possibly inaccurately phrased "reasonable person" standard.

3. An empirical study should be conducted to determine whether mental examinations under Rule 35 of the Federal and Local Rules of Civil Procedure are ordered more frequently for female plaintiffs than for male plaintiffs and under what circumstances. The data should be published.

4. The reports of the District of Columbia Department of Human Rights on sexual harassment and employment discrimination should be made available to the public, so that the Courts, the Bar, and the community have a better sense of the scope of the problem of sexual harassment and sex discrimination in employment in the District.

C. Civil Jury Instructions

Extensive revision of the instructions is recommended. Either language should be gender neutral, or refer to the actual gender of the individual witness, expert, attorney, defendant, plaintiff, etc. Use of "male" terms to include "female" terms should be avoided because the effect, whether intended or not, is exclusive, not inclusive.

FAMILY LAW

The Task Force considered two areas of family law extensively: (1) domestic violence and (2) child abuse and neglect. Domestic violence was consistently cited by attorneys

throughout the information-gathering process of the Task Force as the most important area to study. The Task Force found that child abuse and neglect generally have not been considered by gender bias task forces, which have typically focused on financial issues affecting middle and upper income families. The Task Force concluded that in a number of respects, the court system operates in a gender-neutral manner. The Task Force also identified a number of problems, which are described in part in this summary.

The District of Columbia was one of the earliest jurisdictions to enact legislation to address the problems of domestic violence, and has one of the most progressive statutes in terms of relief available in civil protection orders (CPOs). D.C. Code §§16-1001-1004 (1989). The Task Force conducted a statistical examination of all CPO cases filed in intrafamily court in 1989 by examining the court jackets to to obtain data on the nature of and results in those cases. The most significant findings of the Task Force are that: (1) the court is not routinely awarding custody and visitation in cases where there are children; and (2) the court rarely awards child support in these cases.

In its study of abuse and neglect cases, the Task Force found that judges are widely perceived to use stereotypical views of mothers and fathers when making decisions. In the opinion of many child abuse and neglect lawyers, judges view mothers as the crucial parent figure and, as a result, more is expected from them. Judges are perceived to be more critical of mothers who are viewed as deficient than they are of fathers. Fathers are seen as marginal figures not entitled to substantial blame or credit.

The Task Force also studied whether there is gender bias in the implementation of general domestic relations law, including property division, custody and support laws. Among the areas studied, the Task Force examined how well the courts are enforcing payment of alimony awards, and concluded that the courts are perceived to be deficient in enforcing the awards. Court rules and procedures should be improved because the survey revealed that respondent attorneys have little confidence that current procedures lead to prompt enforcement. Moreover, there is little belief that judges impose appropriate civil penalties for noncompliance with court orders concerning alimony. One of the strongest criticisms of judges was for their failure to impose jail sentences against respondents who deliberately fail to abide by court orders for payment of alimony.

The Task Force found that many domestic relations lawyers believe that judges in the District of Columbia more often than not view mothers as more fit to have custody than fathers regardless of whether women are working or not. Only women who place great emphasis on their careers are seen to be disadvantaged over men in similar situations.

To address the problems found, the Task Force made numerous recommendations, which are listed below.

1. Domestic Violence

General

1. The Chief Judge of Superior Court should create a Domestic Relations Procedure Task Force similar to the Civil Delay Reduction Task Force to include judicial officers, court administrators, and members of the domestic relations and domestic violence bars, with a mandate including, but not limited to, the following:

   a. implementation of the recommendations made in this report;

   b. consideration of the recommendations for handling intrafamily cases in the reports of the National Institute of Justice and the National Council of Juvenile and Family Court Judges, giving particular attention to recommendations regarding enforcement of CPOs; the interrelationship between CPO enforcement and criminal proceedings; the content of CPO orders; and concerns about the physical plant;

   c. development of effective court procedures for filing and issuance of TPOs; and

   d. development of calendaring policies that allow for full and effective use of court time for custody, support and visitation issues.

2. The Task Force recommends that training for judges entering Intrafamily Court include the causes and effect of domestic violence; the impact of violence on children; and the importance of addressing issues of support, custody and visitation on the success of civil protection orders.

3. Court support staff and marshals should be provided training on domestic violence issues to the extent necessary to provide courtroom security and to assist parties and witnesses in such cases.

4. Judges should stress to the litigants the importance of these cases generally and personally address each respondent who will be subject to a CPO. The judge should emphasize the mandatory nature of the court's order and the penalties, including incarceration, for violation of the CPO.

5. The Court and the Bar should develop materials, including written explanatory material, videotapes and court forms, to be made available to pro se litigants in advance of hearings.

Representation and Pro Se Litigation

1. Because many parties appear pro se, time should be allotted at the opening of CPO court for an explanation of the proceedings generally, and the court should ascertain the nature of all claims and defenses. Appropriate action should be taken to ascertain whether counsel is desired or required. All issues presented, including custody, visitation and support, should be resolved.

2. Where petitioner seeks sanctions for criminal contempt, the court should consider appointment of Corporation Counsel to represent petitioners pursuant to SCR Intrafamily Rule 12(c)(2).

3. Representation of petitioners by members of the private bar, particularly in CPO trials, should be encouraged, and funding should be sought to compensate attorneys for services rendered.

4. The findings of this Task Force should be made available to the D.C. Bar Task Force on Representation in Domestic Relations Cases, and the Bar should also provide training programs on issues arising under the CPO statute.

Child Custody and Visitation

1. Child custody and visitation issues should be addressed and resolved when the parties have a child in common.

2. The safety of the children should be considered in custody and visitation determinations in all family violence cases, with consideration given to the ramifications that shared custody might have in a volatile situation. Petitioner's safety and the welfare of the children should be the subject of inquiry, careful consideration, factual findings, and an order for custody and/or visitation consistent with the welfare of the children and the safety of all affected parties.

3. Judges should decide all issues properly raised by the parties, including custody, visitation and support. If issues appear to be lengthy or complex, procedures should be developed to permit certification of the case for hearing on an expedited basis.

4. Since it appears that one of the most frequent causes for contempt is violation of visitation orders, the need for particularized orders should be considered.

Child Support

1. Child support issues should be considered and resolved as allowed by law in CPO cases where the parties have a child in common and custody is ordered.

2. Child support forms should be published by the court and made readily available for use in all cases in which child support is involved.

3. Child support orders should be calculated under the D.C. Child Support Guideline and should be written on court child support forms.

Temporary Protection Orders

1. Procedures for obtaining TPOs should be simplified, and personnel involved in providing access to the Courts should be trained in the procedures. This should be a priority of the proposed Domestic Relations Procedure Task Force.

2. Procedures should be developed to allow petitioners to prepare the necessary court documents while at the Citizen's Complaint Center.

3. Personnel in the Mayor's Command Center should be trained in how to process applications for emergency orders, in particular from pro se petitioners.

Contempt

1. The Court and the D.C. Bar should address the need to provide attorneys for petitioners in contempt proceedings. Although Superior Court Intrafamily Rule 12(c)(2) provides that the court may request Corporation Counsel to represent petitioner, the availability of more attorneys appears to be required to assure prompt and complete presentation of the cases.

2. Meaningful sanctions must be imposed for contempt, with consideration given to the need for more severe sanctions in cases of multiple counts of contempt or subsequent contempts.

3. Supervised probation should be considered in contempt cases involving CPOs.

4. The court should develop procedures for handling violations of CPOs reported by probation officers or the police, similar to the procedures used for violation of probation orders in other criminal cases.

Physical Plant

1. A permanent courtroom for intrafamily cases should be designated. The courtroom should have lock-up facilities and be large enough for petitioners and respondents to sit separately.

2. Notices of hearings should clearly state the courtroom to which the parties are to report. The courtroom should be open at the designated time, and a deputy U.S. Marshal should be present when the court opens.

3. Adequate attention must be given to security issues such as:

   - separating the parties before court through individual waiting areas, and during court by seating arrangements;
   - stationing deputy marshals in the courtroom and halls;
   - allowing petitioners to leave in advance of respondents.

Other Recommendations

1. Extensions: The Task Force recommends that the Council of the District of Columbia consider amending the Intrafamily Violence statute to provide that CPOs remain in effect for at least 3 years and that the provisions for child custody, support and visitation remain in effect until further order of the court (without specific end date).

2. Defaults: If the respondent is served and fails to appear for the CPO hearing, and the petitioner is present and ready to proceed, the Task Force recommends that the hearing proceed, rather than requiring the petitioner to return for a future hearing. Consideration should be given to any rule change necessary to implement this recommendation. The Court should order the Metropolitan Police Department to serve the orders where service of the default CPO may prove a problem.

3. Failure To Appear cases

   a. The Task Force recommends that the procedures currently in effect to notify petitioner or her attorney before and after bench warrant hearings be improved.

   b. The Domestic Relations Procedure Task Force, if established, should develop a proposal for a statutory amendment or rule change which would permit imposition of appropriate conditions of release.

4. Continuances: Where continuances are granted prior to the hearing on the CPO, the Task Force recommends that a TPO be issued effective until the hearing date.

5. Findings of fact: Because CPO cases tend to be on-going, and judges do not retain jurisdiction of the cases they have heard upon transfer to a different assignment, the Task Force recommends that judges state findings of fact on the record following trial in CPO matters, and that the Intrafamily Rules Subcommittee develop a mechanism for including written findings of fact in the court jacket. In addition, the Task Force recommends that judges retain cases where they have heard contempt motions for further enforcement proceedings, and procedures to effectuate this policy should be developed.

6. Dismissals

   a. Voluntary: The Task Force recommends that where possible the inquiry suggested by the Intrafamily Rules into the basis for petitioner's request to dismiss be conducted outside the hearing of the respondent.

   b. Dismissal by court: Since CPO court is generally a pro se court, the Task Force recommends that the court develop procedures to avoid automatic dismissal where the petitioner has not appeared. The Task Force recommends that the case be placed on an inactive docket and that petitioner be notified of the procedure required to reactivate the case.

2. Child Abuse and Neglect

1. Training programs for judges assigned to Family Division should include child development; parenting (including the importance of a primary care-giver regardless of gender); the dynamics of family violence; and the avoidance of stereotypical thinking. Presentations should be made by child psychologists, pediatricians, and social scientists.

2. Consistent with practicality and the nature of the adversary system, more attention must be paid to fathers. First, in a positive sense, efforts should be made to foster the father/child relationship and to encourage fathers to play an active role in their children's upbringing. Second, when a father has not provided proper parental care and support, this should be the focus of judicial attention in the same way as improper maternal care.

3. Social workers, police officers, prosecutors, and CCAN attorneys must be re-trained to focus on the father's conduct and behavior in a manner similar to the emphasis placed on the mother's conduct.

4. Judges need to increase their awareness that they are perceived to hol stereotypical views that affect their decisions, and consciously work t avoid decision-making based on assumptions about differences in the wa mothers and fathers should behave. Hopefully, contemplation of th survey results should begin this process.

3. Domestic Relations

General

1. In all areas of domestic relations practice, the family law bar perceiv that insufficient attention is paid to the problem of enabling t economically disadvantaged spouse to maintain a fair standard of livi pending resolution of the marital disputes, to pursue effectively t lawsuit, and to preserve assets pending equitable distribution.

   The Task Force recommends that the court find methods to assure th greater attention is given to the pre-trial aspects of domestic relatic practice including pendente lite relief, pre-trial preservation of asse discovery, and enforcement of pre-trial orders.

2. The Task Force recommends that Family Division rules, administrat procedures, and calendaring practices be revised to ensure easy pre-tr and emergency access to the court making this relief available to litigants regardless of socio-economic status.

3. Implementation of the recommendations regarding domestic relati litigation as set forth in the section on divorce, custody and support (e restraining orders, pendente lite alimony, attorney fees, etc.) should made part of the mandate of the Domestic Relations Procedure T Force, the creation of which is recommended in the section on Dome Violence.

4. Since there is widespread perception among the family bar that the c does not rigorously insist on compliance with domestic relations orc judges and commissioners should take the lead in insuring that their or are obeyed.

Property Distribution

1. The information provided the Task Forces seems to indicate that District of Columbia courts have not yet routinely addressed issue property division that fully reflect the parties' investment during marriage in "career assets" and "earning potential." Judicial educatior attorney education programs should cover the valuation and divisic "career assets" and "earning potential" as a part of the distributic

marital assets. Examination of studies and scholarly commentary on the economic consequences of divorce, women's employment opportunities and income potential would make the application of these concepts more understandable by courts and counsel alike.

2. Efforts should be made to address the long term impact of any property division to assure that each party retains some liquid and income producing assets after divorce.

3. Judges appear to take into account the contribution of the homemaker spouse in the creation and preservation of marital assets.

4. The trial and appellate courts recognize the contribution of homemakers to the separate assets of the other spouse by authorizing award to the homemaker spouse of an equitable interest in the separate property. Continued development of these concepts should be encouraged through judicial and attorney education programs.

5. Attorney's fees awarded pendente lite are essential to enable the economically dependent spouse to pursue the divorce action. Appropriate consideration is not seen to have been given to the financial ability of the economically disadvantaged spouse to pursue the litigation. This is particularly troubling because of the adversary nature of divorce litigation.

6. Judges should assure that any contribution toward attorneys' fees that the economically dependent spouse is required to make from her distributed assets does not leave her in an inequitable economic position afterward in relation to her spouse's economic position.

7. Orders to uncover the existence of assets and orders to prevent dissipation of assets are reported to be enforced badly or not at all. This forms part of a pervasive perception of poor enforcement of domestic relations orders.

8. The Task Force recommends that further study be made to examine whether gender bias exists in the division of property where marital fault is an issue; whether debts of the parties are distributed in an equitable fashion (for example, do courts award the husband the bulk of the income-producing property and the wife the home, which is mortgaged and usually the majority of the marital debt); and whether other long-term consequences of property division are taken into account.

Alimony

1. The Task Force recommends that judicial training include full consideration of the practical realities of the dissolution of long-term

marriages including the earning potential of displaced homemakers and the impact of marital dissolution on the parties' standard of living.

1. Pendente lite: During the critical and sometimes lengthy pre-trial period, the court is seen as failing to ensure consistently that the poorer spouse receives temporary support.

2. Permanent awards: Alimony awards for long-term homemakers are perceived to be inadequate and to fail to equalize the standard of living of divorcing spouses.

3. Enforcement: In general, there is a belief among domestic relations lawyers that there is inadequate enforcement of alimony awards.

Child Custody

1. Gender based stereotypes are seen by attorneys to influence child custody determinations, and this adversely affects both men and women. Mothers are viewed as held to a higher standard of behavior, and fathers are seen as not being taken seriously. This is the same phenomenon observed in the child abuse and neglect study. The Task Force recommends the same steps set forth in that section of this report.

2. Domestic violence should be given appropriate consideration in all custody decisions where issues of family violence are raised.

3. The Task Force recommends that the courts address the current practice which prohibits a party from seeking custody or child support while the parties are living together.

4. Child custody procedures should allow for an early determination of pendente lite custody in the same manner that they provide for early determination of child support.

Child Support

1. Child Support Awards: The Task Force recommends that judges of the Superior Court and Court of Appeals and commissioners give careful consideration to the manner in which the child support guideline is applied in order to strike a balance between consistency and flexibility. Judicial officers should make specific findings on the record justifying deviations from the median guideline.

2. Child Support Enforcement: The court should accord child support enforcement high priority and make sure that all the available enforcement mechanisms, including award of interest on arrears, prompt wage

withholding, and incarceration, are being utilized. The Clerk's office needs to accord child support enforcement a similar high priority in its staffing and administrative procedures.

CONCLUSION

To fully comprehend the method by which the Task Forces sought to determine the presence and nature of biases within the courts and the conclusions and recommendations summarized here, it is important to review the full report. It is the hope of the members of the Task Forces that this report will aid the District of Columbia Courts in its efforts to eliminate gender, racial and ethnic bias from the Courts. The Task Forces look forward to the implementation of the recommendations made.

2.0 EXECUTIVE SUMMARY

The following sections summarize the major findings from both surveys. In the first section we review the key results from the telephone survey of Californians and in the second section we cover the key issues from the mail survey of court personnel and attorneys.

Since every reader will value each finding differently, results are listed in the order of their presentation in the report rather than in any arbitrary order of importance.

A numeric indicator is provided in square brackets [ ] at the end of each key finding indicating the section of the survey report to turn to for further information.

a. Telephone Survey of Public Opinion

Overall Issues

- Most respondents (54%) report low to moderate levels of experience with the courts. While varying patterns of experience are evident across the groups, Asians and Hispanics have *significantly lower* experience scores than do other groups ($p < .001$). [ref. 4.4.1]

- The results for familiarity corroborate the experience findings. Asians are significantly *less familiar* with the courts than other groups. [ref. 4.1.2]

- A majority of survey respondents (58%) report that they obtain most, if not all, of their information about the California courts from the mass media. Asian respondents (seconded only by Hispanics) are significantly *more likely* to obtain their impressions of the court from the mass media than are any other group. [ref. 4.1.3]

- On a scale of '1' to '10', ranging from *not at all fair* to *extremely fair,* respondents, on the average, rated the *overall fairness* of the California Courts to be approximately 5. California's two largest minorities, Hispanics and Asians, give the California courts their highest marks for fairness. Nevertheless, African Americans as a group have a significantly poorer impression of the courts. [ref. 4.2]

- Compared with all other respondents, African-Americans give the state courts a significantly lower rating for fairness toward minorities. [ref. 4.3.1]

- Californians believe their courts to be significantly fairer to Whites than the courts are to any other group of residents. African Americans and Native Americans are perceived to be treated less fairly than everyone else. [ref. 4.3.2]

- Judicial officers, and to a lesser degree non-judicial personnel, feel that the courts are only *somewhat* able to ensure race or ethnically-blind decisions. Continuing the overall trend, the racially diverse attorney group are very pessimistic about the likelihood of unbiased decisions. [ref. 5.4.2]

- Results indicate significant agreement among judicial officers and, to a lesser extent, non-judicial personnel that an exclusionary "Old Boy Network" does not exist. In contrast, attorneys generally feel that it does. [ref. 5.6.1]

- The majority opinion among court personnel is that minority attorneys are *not* treated as second class professionals by judges. However, the attorneys who took part in the survey overwhelmingly feel (58%) that the opposite is in fact the case. [ref. 5.6.2]

- There are significant differences of opinion between judicial and non-judicial personnel who generally contest the claim that minority attorneys are treated like second class professionals by other attorneys, and attorneys who overwhelmingly feel this problem does exist. [ref. 5.6.2]

- In keeping with the observed trends, the findings provide compelling evidence, that at least as far as attorneys are concerned, they do not have the same credibility as White attorneys. On the other side of the issue are judicial officers and non-judicial personnel who feel that minority attorneys enjoy the same credibility as non-minority attorneys. [ref. 5.6.3]

- Judicial officers and non-judicial personnel feel that minority women *do not* have a more difficult time obtaining fair treatment in the courts than do other women. The more ethnically and racially diverse attorney sample feels that the issue does have merit. [ref. 5.7.1]

- With the exception of attorneys who moderately agree that African-American women have a harder time other minority women, the consensus of opinion is that no special bias in the courts exists against African American women. [ref. 5.7.2]

- Judicial officers and non-judicial personnel attest that minority female lawyers are treated with the *same* respect as other female lawyers. Attorneys disagree. [ref. 5.7.3]

- In cases involving a minority defendant and a White victim, non-judicial court personnel and attorneys *agree* that the defendant is *more likely* to be found guilty when he or she is a minority. However, fully 61% of the jurists polled feel the minority defendant is *as likely* as any other defendant to be found guilty. The results for jurists should be compared with 93% of the attorneys and 51% of the non-judicial staff who feel the minority defendant is *more likely* to be found guilty. [ref. 5.8]

EXECUTIVE SUMMARY

DESCRIPTION OF HEARINGS

The committee scheduled 13 days of public hearings in 12 cities throughout the state between November 1991 and June 1992. Participants at the hearings could speak before the committee or give private confidential testimony. The committee also solicited written testimony as an alternative to appearance at the hearings

Shasta County	Redding	November 16, 1991
Imperial County	El Centro	February 21, 1992
San Diego County	San Diego	February 22, 1992
Kern County	Bakersfield	March 6, 1992
Fresno County	Fresno	March 7, 1992
Sacramento County	Sacramento	April 10, 1992
San Joaquin County	Stockton	April 11, 1992
Alameda County	Oakland	May 8, 1992
San Francisco County	San Francisco	May 9, 1992
Los Angeles County	Los Angeles	June 4, 1992
		June 5, 1992
Orange County	Santa Ana	June 6, 1992
Los Angeles County	Universal City	June 13, 1992

The advisory committee staff publicized the hearings by sending press releases to publications such as daily newspapers, legal journals, and ethnic and racial minority papers. Radio and television stations in each region where hearings were planned also received press releases; several stations held interviews with advisory committee members who discussed the mission of the hearings and explained the logistics of appearing to testify.

The committee also sent invitations to individuals and groups throughout the state who it felt might support the committee's mandate and could inform the largest possible constituency about the upcoming hearings. This list included judicial officers, court staff, county bar associations, minority bar associations, lawyers groups, elected and appointed officials (e.g., city council members, boards of supervisors), members of the business community (e.g., chambers of commerce) and community-based organizations and churches.

This report summarizes the recorded testimony of participants who spoke or gave confidential testimony at the 13 statewide public hearings, and of those who submitted written comments to the advisory committee staff. It is not a survey of opinion throughout the state, but a summary of the observations, attitudes, and convictions of the individuals who testified at the hearings or submitted their testimony in writing.

PROFILE OF PARTICIPANTS

In all, 249 people appeared to give testimony at the 13 hearings convened during 1991–92 to investigate charges and experiences of racial bias in the courts; 2,600 pages of testimony were recorded at the hearings. In addition, 94 people sent more than 1,000 pages of written testimony to the advisory committee. Participants in this process included judicial officers and attorneys, past and present employees of the courts, representatives of community-based and legal services organizations, and various concerned and affected citizens.

Female:	88
Male:	161

Judicial officers:	
Superior court	5
Juvenile division	1
Municipal court	7
Tribal court	1
Administrative law	1
Juvenile court referee	1

Members of the legal profession:	
Attorney	78
Deputy public defender	9
Deputy district attorney	3
City Attorney's Office:	
Deputy city attorney	1
Mediator	1
Victims' assistance coordinator	1
Member, OCJP	1
Law professor	2
*Officer or member, bar association	7
*Officer or member, lawyers' group or minority bar association	31
Paralegal	1
Law student	2

Speakers working for or with the court:	
Executive officer	1
Court administrator	1
Jury commissioner	1
Superior court clerk	2
Research attorney	1
Court reporter	1
Interpreter	4
Court supervisor	1
Support staff	1
Current or former grand juror	3

Speakers working for or with the county:	
Court employee	3
Former law enforcement officer	2
Past or present member of state or county commission	7

Elected officials:	2

Speakers representing organizations:	
Civil rights associations	14
Political associations	4
Legal services associations	15
Social services agencies	11
Immigrant services organizations	3
Community-based activist groups	15

Speakers representing themselves:	
Publisher, newspaper	3
Reporter, legal newspaper	1
Tribal representative	3
Teacher	4
Physician	1
Broker/banker	1
Tax accountant	1
Security guard	1
Businesswoman	3
Businessman	2
Miscellaneous	52

*Also counted in "Attorney"

CLASSIFICATION SCHEME

Upon completion of the public hearings, the entire body of testimony—both oral and written—was analyzed, and a classification scheme was developed to identify the major issues raised.

Within each issue classification, analysis included the number of times the issue was mentioned, and whether the comment was based on direct experience, observation, hearsay, or a deeply held attitude or conviction.

Each comment was counted once in the classification, except when the speaker mentioned more than one aspect of an issue. For example, if a speaker commented about the lack of racial and ethnic diversity on the bench, and then talked about the judicial selection process, the testimony was noted twice (e.g., under "Representation and treatment of minorities in the legal profession," the testimony would be noted under the subheadings "Lack of diversity on the bench" and "Contention that the process is rigged against the appointment of minorities").

The issue classifications are:

- Lack of access to justice
- Representation and treatment of minorities in the legal profession
- Speakers' contention that they "won't get a fair shake from the system"
- Urgent need for court interpreters
- Public perception of bias in the judicial system
- Abuse of judicial power
- Observations of disparate treatment of minorities
- Abuse of prosecutorial discretion
- Call for continuing education and cultural awareness training
- Minority employment in the courts
- Complaints about law enforcement
- Accountability of the judicial system
- Family law issues
- Minorities and the jury system
- Impact of shrinking dollars on the judicial system
- Bias in the juvenile justice system
- Testimony of attorneys
- Courtroom interaction
- Bias against women of color
- Bias and the media

This report is a detailed qualitative analysis of the public and confidential testimony given at the hearings, and the written testimony presented to the committee. Consequently, it is not a quantitative survey of generally held opinion throughout the state, but rather the opinions of those individuals who appeared and testified at the hearings. At the same time, we do believe that this information provides valuable insights into the perspectives and views of court users, as well as others who shared their general perceptions about the court system with the committee.

ISSUES RAISED IN TESTIMONY

LACK OF ACCESS TO JUSTICE

The committee heard 149 comments citing lack of access to justice. Difficul arising from economics as well as racial tension often exacerbate the plight those who were specifically identified as lacking access:

- the poor, who suffer from funding cutbacks in programs such as Legal A
- victims of domestic violence, who feel the courts do not regard the abu they suffer as the result of criminal conduct
- those who feel they "are not heard by the judicial system"
- those who would complain but do not know how to proceed
- victims of racially motivated discrimination in their workplace, such as la of equal opportunity for advancement, or unfair termination
- those who need translation services in civil courts, where interpreters are n provided
- those who feel the Voting Rights Act is not working to their benefit (not resu ing in the election of minorities to public office)
- Native Americans and Asians, who are accustomed to different judicial s tems or traditions of conflict resolution

A number of speakers attributed their lack of access to lack of information. Seve testified that they do not understand the system (3) or their rights guaranteed u der it (10). Others said they had difficulty securing specific information, such how to defend oneself in pro. per.

Seventy-eight additional barriers to access were identified. Six participants c sidered language a barrier for litigants who are not fluent in English, and w suffer from the lack of bilingual judges and court staff. Poverty as a barrier access was cited 18 times, and included references to the cost of retaining an torney and the burden of paying administrative fees.

Ten speakers said that how the system defines crime is a barrier to access. In t context, several questioned whether our judicial system confronts and adequat prosecutes acts referred to as "hate crimes," such as the seemingly senseless physi assaults on non-Whites.

Sixteen speakers cited poor attorney performance as a barrier to access. Exa ples of this included refusal to take police brutality cases and failure to challer a judge.

Cultural norms that sometimes obstruct access were cited 28 times. One spea mentioned that some immigrants come from countries whose judicial system cluded them, or instilled terror rather than trust in that system. As a result, th people are fearful of approaching police departments and the courts. Some those testifying stated that culturally learned passivity (as defined by the speak also serves to inhibit minorities from asserting their rights.

Additional underserved potential court user groups lacking access to the judi system were identified as recent immigrants, the developmentally impaired, incarcerated, undocumented aliens, and geographically isolated population

REPRESENTATION AND TREATMENT OF MINORITIES IN THE LEGAL PROFESSION

The representation and treatment of non-White judges and attorneys were mentioned 111 times. Thirty-three speakers cited the lack of diversity: sitting judges do not reflect the racial and ethnic diversity of the communities they serve. Another 5 criticized the judicial selection process as obstructing the elevation of minorities to the bench.

Several speakers described incidents in which minority judges were targets of biased treatment; one jurist resigned (3). Eight observations were made about the low number of minority attorneys in practice, and the need for more.

There were 55 accounts of mistreatment of minority attorneys. Thirty-one specific cases of abusive or rude comments were cited, including 9 examples of mistaken identity (the failure of court officers or staff to recognize a minority as the attorney). Two Asian attorneys described their discomfort at being outside the "old boy network" of the court, and identified what they believed was a lack of access to the bench that their White colleagues enjoy. Thirteen attorneys described the destructive impact of biased treatment on their self-esteem and sense of professional competence.

SPEAKERS' CONTENTION THAT THEY "WON'T GET A FAIR SHAKE FROM THE SYSTEM"

Speakers offered 72 examples to support their conviction that as minorities they could not "get a fair shake from the system." Several comments were based on direct experience of what they believed to be unfair and biased treatment by the courts, including "not being taken seriously by the judge" and having their evidence discounted because they were a minority (15). Many stated such convictions as "there's no justice for minorities," "the judicial system is against us," and police officers are "the oppressor" (43).

In summary, those testifying drew the conclusion that the courts are not fair to minorities, and that racism exists in the judicial system. What they had observed of the bench and court personnel confirmed this view.

URGENT NEED FOR COURT INTERPRETERS

The pressing need for more and better court interpreters was cited 67 times. This included 30 comments urging that interpreters be required in all civil areas. Other people registered complaints about the sloppy or inaccurate work of interpreters (19), and some speakers called for upgrading the profession, both as a means of improving the quality of work and as a guarantee that top people will be attracted to the field (7). Suggestions for achieving that goal included increasing compensation and providing extended education in legal terminology and changes in the law. Three interpreters appeared before the advisory committee to register complaints, including their experience of disrespectful treatment from the bench and courtroom staff.

PUBLIC PERCEPTION OF BIAS IN THE JUDICIAL SYSTEM

There were 64 comments by speakers who perceive that the judicial syste biased against minorities. These included 15 global statements about struct bias and institutionalized racism in the system, including remarks that "the tem frustrates [their] ability to expose bias," and "the system is into winning, justice." Forty-six comments were made about racist or insensitive behavio the courts, allegedly by judges, deputy district attorneys, deputy public defenc and police department officials, including several speakers' perception that "the all in cahoots together." Another assertion was that attorneys do not disch their duties independently of the court, to the detriment of the minority litig for example, deputy public defenders, because of pressure from judges, may too quick to plea bargain.

ABUSE OF JUDICIAL POWER

A total of 64 comments were made about the abuse of judicial power. Thirt people offered observations on the misuse of power: they claimed that juc tolerate racism among court staff and "side with White attorneys against min ties." One speaker articulated his conviction that judges are hostile to discrim tion suits, making it hard for victims to seek redress.

Several speakers perceived a lack of accountability in some judges' reluctanc deal with issues of discrimination in law enforcement (9). If, for example, a c involves a police officer who has behaved in a biased manner towards a non-Wh a judge may be reluctant to confront the issue. Other speakers and corresp dents gave examples of abuse of discretionary power (9). These included a juc recusing himself to avoid having to voir dire prospective jurors (which would fa tate uncovering bias among jurors), and some judges' perceived reluctance to h "hate crimes" in their court.

Speakers also described some judges' manner as "arrogant," "unapproachab and "insensitive," and several charged that judges "hold stereotypic negative vie of minorities" (10). As an example of perceived judicial error, one speaker m tioned the change-of-venue decision in the Rodney King case.

OBSERVATIONS OF DISPARATE TREATMENT OF MINORITIES

Sixty-two comments were made about direct observations of unfair or uneq treatment of minorities compared to Whites, including the unwillingness of courts to release minorities on their own recognizance (OR), the setting of h bails, illegal searches and seizures, and what appear to be racially biased verdic Witnessing events such as these provoked 5 speakers to charge that the law selectively enforced, either to favor Whites or to disfavor minorities.

ABUSE OF PROSECUTORIAL DISCRETION

Fifty-five comments were made charging racial bias in the exercise of prosecutorial discretion. Speakers claimed that bias factors into policy in determining the severity of charges against minorities, as well as in prosecutors' handling of own recognizance (OR) decisions and bail recommendations.

Fifteen people charged abuse of the plea bargaining process, with 10 citing the high number of plea bargains for minorities, one contending the process gives the district attorney "too much power," and 2 describing incidents in which minorities felt coerced into pleading to a charge.

CALL FOR CONTINUING EDUCATION AND CULTURAL AWARENESS TRAINING

Fifty-three speakers urged the courts to initiate refresher courses for judges in areas such as anti-discrimination statutes and the basic civil procedures that dominate small claims court activity, and for lawyers in civil rights law.

Speakers commented on the various pressures racial and ethnic diversity brings to bear on the court system, and called for extensive cultural awareness programs for judges, attorneys, court support staff, and law enforcement officers, whose demanding jobs are exacerbated by racial tension.

Several people described their failed attempts at conducting cultural awareness training programs, and they observed that it is a difficult task.

Fifteen people testified that the society at large would benefit from education programs—perhaps via cable television—that explain how the judicial system works.

MINORITY EMPLOYMENT IN THE COURTS

Fifty-one comments were made about issues affecting minority employees and those seeking employment within the court system. Lack of diversity and its negative impact were mentioned 20 times. Unfair hiring and promotion practices, and abuse of due process (such as the suspension of a worker's constitutional rights by the illegal search of personal property), were cited 11 times.

COMPLAINTS ABOUT LAW ENFORCEMENT

Speakers made 46 comments about minority interaction with law enforcement officers. Thirty-four objections to police policies and methods included the assertion that police observe a double standard in response and arrest for minorities as compared to Whites, and that crimes against minorities are not adequately investigated and resolved. Three speakers noted that as a consequence there is a disproportionately high percentage of the non-White population in prison. Nine comments about the lack of accountability for police behavior included charges of inadequate external investigation of excessive use of force and police brutality; speakers also alleged that law enforcement officers resist or ignore training efforts aimed at modifying these behaviors. Two speakers commented on the non diversity of the police force.

ACCOUNTABILITY OF THE JUDICIAL SYSTEM

Speakers made 46 observations about different aspects of accountability in t judicial system. Thirteen mentioned laws that they contended are not enforce including Indian sovereignty laws. There were 15 assertions that the judicial sy tem is not functioning as it was designed to, including the observation that rem dies for systemic self-correction are ignored or circumvented. Eighteen speake described incidents supporting their contention that they did not receive justi or redress.

FAMILY LAW ISSUES

Forty-four comments concerning family law included obstructed access to justic (e.g., because of language barriers and the lack of interpreters), difficulty in ob taining restraining orders, and the court's nonresponsiveness to child protectio issues. Several speakers urged cultural awareness training for family court judici officers and staff.

MINORITIES AND THE JURY SYSTEM

Speakers made 40 remarks concerning bias in both grand juries (8) and trial ju ries (32). They criticized the lack of diversity and the selection process for both grand and trial juries, decried discriminatory tactics to eliminate minorities from the jury pool, and emphasized the negative impact of racial stereotypes on non White jurors. Six attorneys described their encounters with biased jurors, and the effects of bias on their cases.

IMPACT OF SHRINKING DOLLARS ON THE JUDICIAL SYSTEM

Thirty-six observations about the reduction or loss of public and private funding included 16 comments on the direct impact of these cuts on the courts and 10 remarks about the effects of leaner budgets on government agencies such as the Department of Fair Employment and Housing, and community-based organizations such as Legal Aid. Ten speakers charged that bias was manifested in the alleged politicized allocation of diminished resources, and discussed its consequence for minorities.

BIAS IN THE JUVENILE JUSTICE SYSTEM

There were 36 examples given of bias in the juvenile system. They included observations of the disproportionate incarceration of minority youth, and complaints about policies and treatment of youth in custody at a detention camp. Twelve complaints about police harassment of minority youth were registered and there were 3 entreaties to improve the K–12 public education system.

TESTIMONY OF ATTORNEYS

Thirty-one comments were made by attorneys, who expressed their concern over the public's diminishing regard for the legal profession (6), and their discomfort with aspects of their relations with the judiciary (9).

A number of attorneys—both female and male—described their dismay at the impact of their minority status on their professional practice. They gave examples that included difficulty attracting clients and disparities in jury awards (confirmed in interviews with jurors).

COURTROOM INTERACTION

Speakers made 19 comments about their experiences in the courtroom. These included accounts of biased remarks by judges, courtroom personnel, and staff (15), and of behavior that non-White court users experienced as discriminatory (4).

BIAS AGAINST WOMEN OF COLOR

Fifteen speakers observed that women of color suffer multidimensional bias—based on both race and gender. They felt its impact in the failure of the police and the courts to protect them, and in a lack of cultural sensitivity throughout the judicial system.

BIAS AND THE MEDIA

Fourteen observations were made about the remarkable dual power of the media in our society, both as a force to create and foster destructive racial stereotypes that have a discernible impact on the administration of justice (5), and as an effective tool to expose and mitigate bias in society and the courts (5). Four speakers urged the modification of the protocol of silence, imploring judges to use the media to speak directly to the citizenry about bias in the courts and in our society.

TABLE 1: ISSUES CITED AT PUBLIC HEARINGS

Issue	Percentage of Total Comments*	Numb Times Me
Lack of access to justice	14%	149
Representation and treatment of minorities in the legal profession	10%	111
Speakers' contention that they "won't get a fair shake from the system"	7%	72
Urgent need for court interpreters	6%	67
Public perception of bias in the judicial system	6%	64
Abuse of judicial power	6%	64
Observations of disparate treatment of minorities	6%	62
Abuse of prosecutorial discretion	5%	55
Call for continuing education and cultural awareness training	5%	53
Minority employment in the courts	5%	51
Complaints about law enforcement	4%	46
Accountability of the judicial system	4%	46
Family law issues	4%	44
Minorities and the jury system	4%	40
Impact of shrinking dollars on the judicial system	3%	36
Bias in the juvenile justice system	3%	36
Testimony of attorneys	3%	31
Courtroom interaction	2%	19
Bias against women of color	1%	15
Bias and the media	1%	14

* to the nearest 1 percent

TABLE 2: ISSUES CITED IN CORRESPONDENCE

Issue	Percentage of Total Comments*	Number of Times Mentione
Lack of access to justice	16%	25
Representation and treatment of minorities in the legal profession	5%	7
Speakers' contention that they "won't get a fair shake from the system"	14%	22
Urgent need for court interpreters	4%	6
Public perception of bias in the judicial system	16%	24
Abuse of judicial power	6%	9
Observations of disparate treatment of minorities	6%	9
Abuse of prosecutorial discretion	3%	5
Call for continuing education and cultural awareness training	3%	5
Minority employment in the courts	3%	5
Complaints about law enforcement	8%	12
Accountability of the judicial system	5%	8
Family law issues	3%	5
Minorities and the jury system	1%	2
Impact of shrinking dollars on the judicial system	1%	2
Bias in the juvenile justice system	1%	–
Testimony of attorneys	–	–
Courtroom interaction	3%	5
Bias against women of color	–	–
Bias and the media	–	–

* to the nearest 1 percent

1. *Executive Summary*

In March 1991, California Chief Justice Malcolm M. Lucas appointed the Judicial Council Advisory Committee on Racial and Ethnic Bias in the State Courts. The advisory committee was charged with the mandate to: (1) study the treatment of racial and ethnic minorities in the state courts; (2) ascertain public perceptions of fairness or lack of fairness in the judicial system; and, (3) make recommendations on reforms and remedial programs, including educational programs and training for the bench, the bar, and the public.

To carry out its mandate, the advisory committee has commissioned studies designed to capture public perceptions of fairness and to examine the treatment of minorities.[1] This report — one in a series or reports that will address the committee's mandate[2] — specifically examines the racial and ethnic composition of the work force in the California trial court system. Until now, the courts have not undertaken such an examination in a comprehensive manner.

1 "Minority," for the purpose of this report, refers to African-Americans, Asian and Pacific Islanders, Latinos, and Native Americans.

2 See 1991-92 Public Hearings on Racial & Ethnic Bias in the California State Court System. See also, Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel.

Following are highlights of some of this report's findings about the California trial court system, which are examined in greater detail later in the text.

Eighty-nine percent (89%) of judicial personnel[3] in the California superior courts are White, four and one-half percent (4.5%) are African-American, four percent (4%) are Latino, and two percent (2%) are Asian-American. There are no Native Americans among superior court judicial personnel.

In the California municipal courts, eighty-three percent (83%) of judicial personnel are White. African-Americans and Latinos each constitute between six percent (6%) and seven percent (7%) of those judicial personnel. Asian-Americans are three percent (3%) and Native Americans are less than one percent (1%) of those judicial personnel.

Fifty-eight percent (58%) of the non-judicial superior court personnel[4] are White, twelve and one-half percent (12.5%) are African-American, nineteen and seven tenths percent (19.7%) are Latino, and nine and three-tenths percent (9.3%) are Asian-American. Six-tenths of one percent (0.6%) are Native American.

3"Judicial personnel" includes judges and commissioners.

4"Non-judicial personnel" includes, for example, courtroom clerks, research attorneys and clerical workers.

Among non-judicial superior court positions, Whites constitute eighty percent (80%) of the superior court officials and managers and ninety-three percent (93%) of court research attorneys. In the highly visible position of courtroom clerk, sixty-eight percent (68%) are White, ten percent (10%) are African-American, fifteen percent (15%) are Latino, and seven percent (7%) are Asian-American.

In office and clerical positions, Whites are forty-seven percent (47%) of the superior court work force, while African-Americans represent approximately eighteen percent (18%), Latinos represent twenty-two and one-half percent (22.5%), and Asian-Americans represent eleven and one-half percent (11.5%) of these positions.

Certain gender distinctions are noteworthy. White females represent a majority of the courtroom clerks, court research attorneys and court reporter positions. Minority females are more likely to be in office, clerical, or interpreter positions.

White males constitute the largest percentage of superior and municipal court judges, representing seventy-seven percent (77%) and sixty-nine percent (69%) of these positions, respectively. These data are detailed in Section 4 and Appendix C.

Section 4 of this report presents comparisons of these trial court data with the United States Census information for California. Whites represent a higher share of the state's judicial personnel than is reflected in their proportion of the population.

Correspondingly, other racial and ethnic minority groups are represented among judicial personnel at less than their proportion in the state population.[5]

For non-judicial superior court employees, the percentage of White employees generally equals the percentage of the Whites in the state population. African-Americans are represented at a higher percentage than their proportion in the state populations, while Latinos are underrepresented. Asian-American non-judicial employees are almost proportional to their representation in the California state population while Native Americans are underrepresented in almost every category. Specific job categories demonstrate a great disparity among certain professional and non-professional careers, as noted above.

For a detailed examination of these data, please refer to Section 4, in addition to the Appendices.

[5]*It should be noted that it is the attorney population, not the general population of California, from which judicial personnel must be selected. The State Bar of California does not maintain statistics on the racial and ethnic composition of its membership. In 1991, the State Bar of California contracted with SRI International to collect quantitative information on demographics and professional characteristics and professional liability insurance issues of the State Bar membership. A 28-item questionnaire was mailed to a random sampling of 14,300 California Attorneys and a response rate of seventy-three percent (73%) was achieved. Among the various demographics characteristics gleaned from the survey was a finding that ninety-one percent (91%) of those responding to the survey were White, three percent (3%) were Asian, three percent (3%) were Hispanic, and two percent (2%) were Black. Seventy-four percent (74%) of those responding to the survey were male. The Advisory Committee, while noting the existence of the State Bar's demographic survey, found that the distinct purpose and randomness of the bar survey precluded it from being used for comparison purposes with the present survey which is based on a one hundred percent (100%) count of all trial court personnel.*

WASHINGTON STATE MINORITY AND JUSTICE TASK FORCE EXECUTIVE SUMMARY

The Washington State Minority and Justice Task Force, appointed by the Chief Justice of the Supreme Court in 1988, was established by the State Legislature to study the treatment of minorities in the state court system, to recommend reforms and to provide an education program for the judiciary.

The scope and magnitude of the legislative mandate was not fully realized until the Task Force held public forums around the state in late 1988. The testimony heard at the public forums suggest that many minorities in our state distrust the very institution established to protect their rights as citizens--the courts. It therefore became incumbent upon this Task Force to review the problems and issues brought to our attention at these forums. For instance, speakers commented on the low representation of minorities as judges and court employees; the poor quality of court interpreters for non-English speaking citizens; the underrepresentation of minorities on the existing jury source list; and the apparent need for cultural awareness training for all court officials and court employees.

Subsequent to the public forums and despite the Task Force's limited funding[1], it conducted ten empirical studies and sponsored seven introductory cultural awareness seminars. Some of the Task Force's conclusions and recommendations are summarized in the following sections.

SELECTED CONCLUSIONS

- Minorities believe that bias pervades the entire legal system in general and hence, they do not trust the court system to resolve their disputes or administer justice even-handedly.

- There is a perception that minorities are underrepresented, if represented at all, on most juries.

- In general, a study of landlord-tenant cases that went to trial did not show significant differences in minority and non-minority case outcomes. However, those cases that did not go to trial showed differences in the manner in which those cases were resolved.

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[1]Between 1987 and 1990, the Legislature allocated $317,000.00 for the Minority and Justice Task Force to conduct its empirical studies, to provide cultural awareness seminars for the judiciary and to cover general operating costs.

- A sample of asbestos cases showed that minorities received lower average settlement amounts than non-minorities.

- Based on responses to questionnaires sent to prosecutors and public defenders, it was concluded that systemic institutionalized bias may negatively impact those who lack financial resources, many of whom are minorities.

- A sample of out-of-custody and in-custody defendants showed that minorities are more likely to be held in custody following conviction and prior to sentencing.

- The fact that minorities tend to be government attorneys and are less likely to hold positions in law firms is a concern. The Task Force's findings show that minorities' apparent levels of educational attainment are, on the average, equivalent to or higher than those of non-minority bar members.

- In 1988, the percentage of minorities on the bench (about 4%) was slightly less than the percentage of minority lawyers (5%). In 1988, the percentage of minorities on the bench (about 4%) was substantially less than the estimated percentage of minorities in the general population (about 11%).

- As of November 1990, most minority judges in this state served on the bench in Seattle and King County.

- To the extent that minorities are represented in nonjudicial court positions, they were concentrated in office/clerical categories, according to data collected by the Task Force in June 1989.

- Some courts may have equal employment opportunity statements. But, few courts have implemented comprehensive programs designed to increase minority representation through specific policies and procedures, despite the widespread problem of minority underrepresentation.

- Jurisdictional issues continue to be a concern of tribal and state courts, particularly with respect to child custody cases and the appropriate application of the Indian Child Welfare Act.

SELECTED RECOMMENDATIONS

- Funding for the Supreme Court Minority and Justice Commission.

  The Task Force recommends that the State Legislature appropriate funds for the Supreme Court Minority and Justice Commission for the purpose of (a) conducting additional research as recommended by the Minority and Justice Task Force; (b) overseeing implementation of the Task Force's recommendations; (c) developing ongoing awareness training for judges, other legal professionals and court staff; (d) recommending measures to prevent possible bias in the state court system; and (e) retaining the necessary staff to carry out the work of the Commission.

- Development of a Workforce Diversity Program for the Court System.[2]

  The Task Force recommends that the State Legislature immediately fund a Workforce Diversity Program for the court system designed to increase the number of minority employees in the court system. Specifically, the program would set forth the minimum elements that the courts would adopt for improving minority representation among nonjudicial court employees, with additional program elements for those courts with unusual or unique problems.

- Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.

  The Task Force recommends that the State Legislature pass Second Substitute Senate Bill 5953 (2SSB 5953) in the 1991 legislative session. The bill provides for an implementation plan to expand the jury source list to include licensed vehicle drivers and state identicard holders. Currently, the lists of jurors are drawn from the registered voter rolls.

- Establishment of a Community Law Education Program.

  Based on testimony heard at the 1988 public forums, the Task Force recommends funding from the State Legislature to conduct a series of law-related community seminars, which would include a minority outreach component.

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[2]A Workforce Diversity Program would be a program specifically designed to address the underrepresentation of minorities in the nonjudicial workforce of the court system. It can be described as follows: "The Washington State Court System will establish specific policies and procedures for annual reporting in order to identify job categories where minorities are underrepresented; will recruit, hire, and retain qualified minorities in order to eliminate existing underrepresentation in specific occupational categories and locations; and will provide an ongoing commitment to the goal of a racial and ethnically diverse nonjudicial workforce."

- Continued Awareness Training and Education.

  The Task Force recommends that the State Legislature appropriate funds for continuation of the introductory cultural awareness seminars developed by the Task Force in 1990 and the development of intermediate and advanced seminars. Seminars would include substantive areas of the law and topics on institutional biases.

- Brochures and Seminars on the Judicial Selection Process.

  The Task Force recommends that the Legislature appropriate funds to the Minority and Justice Commission to coordinate the publication of brochures and the organization of seminars to inform potential or interested judicial aspirants about the judicial selection process and other relevant issues. This program would also encourage participation of minority attorneys and the minority community.

- Publication of Information on Bar Membership.

  The Task Force recommends that the Washington State Bar Association collect and publish on an annual basis information concerning the composition of its minority and non-minority membership.

- Increase the Number of Minority Law School Students.

  In view of the small percentage of minority attorneys in this state, law schools in the state must be encouraged to continue their efforts to recruit more minority students.

- Measures to Encourage Cooperative Approaches Between Tribal and State Courts.

  The Task Force recommends that the Supreme Court and the Office of the Administrator for the Courts develop measures to assist all state courts in improving cooperation and communication between the tribal and state court systems, especially on matters involving child custody.

CONCLUSIONS

The conclusions of the Task Force are summarized in this section and are based on qualitative and quantitative research and studies conducted by several researchers. The conclusions focus on five broad areas of concern. Those areas are:

- The perceptions about the treatment of minority litigants in the Washington court system;
- The treatment of minority litigants in civil and criminal matters;
- The number and underrepresentation[6] of minorities as lawyers and judges;
- The number and underrepresentation[6] of minorities as nonjudicial court employees; and
- The education and training of legal professionals and court staff regarding the existence of bias in the court system.

GENERAL PERCEPTIONS ABOUT THE TREATMENT OF MINORITY LITIGANTS

Many minorities, some lawyers and a handful of judges hold similar perceptions about the treatment of minority litigants. These general perceptions, however, are not necessarily shared by all persons working in the courts. The more significant and disturbing perceptions, the Task Force concludes, are listed below.

1. Minorities believe that bias pervades the entire legal system in general and hence, they do not trust the court system to resolve their disputes or administer justice even-handedly.

2. There is a perception that in criminal proceedings, minorities receive disparate treatment and harsher sentences despite the guidelines set out in the Sentencing Reform Act (especially with regard to the first offender waiver and the exceptional sentence provisions).

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[6]Representation may be defined in terms of the simple proportion of a specific group compared to their proportion in the general population. An alternative definition views representation in terms of a group's relative socioeconomic standing compared with another group.

3. There is a perception that a lack of uniformity exists in criminal prosecutorial decision-making regarding cases involving minority persons.

4. Minorities believe that some law enforcement officials tend to treat minority persons with disrespect and engage in offensive behavior toward minority persons.

5. Those working in the judicial system believe that the quality of justice delivered to minority litigants who require the services of an interpreter for legal proceedings are adversely impacted by the unavailability of a sufficient number of competent and trained interpreters in the court system.[7]

6. Those minorities who must rely on public defender organizations perceive themselves to be disadvantaged because those agencies remain understaffed, poorly funded, and lack available resources.

7. There is a perception that minorities are underrepresented, if represented at all, on most juries.

8. There is a perception that some judges, lawyers, other officers of the court, and court staff have made offensive remarks and have demonstrated other biased attitudes toward minorities appearing in court.

9. Minorities perceive that they do not have access to rehabilitation programs as readily as *non-minority defendants*.

10. There is a perception that the criminal justice system provides inadequate protection, access, support, and services to minority victims of crime.

THE TREATMENT OF MINORITY LITIGANTS IN CIVIL AND CRIMINAL MATTERS

Civil Matters

1. In general, a study of landlord-tenant cases that went to trial did not show significant differences in the minority and non-minority case outcomes. However, those cases that did not go to trial showed differences in the manner in which those cases were resolved. The study also showed a disproportionately high number of minorities involved in landlord-tenant disputes, many of which were initiated by the landlord.

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[7]The need for foreign language interpreting is significantly similar to the need for sign language interpreting. Also, there are comparable concerns with respect to the quality of justice provided to the hearing-impaired litigant.

2. In a study of asbestos cases, the case data showed that minorities received lower average settlement amounts than non-minorities. Although this limited study can not be applied to all personal injury cases, it does mean that other personal injury cases should be examined to determine if similar results are occurring.

Criminal Matters

1. A majority of county prosecutors and public defenders in Washington State agree that people who have fewer economic resources are disadvantaged in the criminal justice system. For instance, they are less able to make bail and to afford alternatives to incarceration.

2. Based on responses to questionnaires sent to prosecutors and public defenders, it was concluded that systemic institutionalized bias may negatively impact those who lack financial resources, many of whom are minorities. In addition, the existence of bias in the criminal justice system may infrequently be the result of racial and ethnic bias on the part of individual actors.

3. The majority of county prosecutors do not appear to have specific procedures for filing criminal charges.

4. A sample of out-of-custody and in-custody defendants showed that minorities are more likely to be held in custody following conviction and prior to sentencing. Consequently, minority defendants are less able to give positive assistance in the pre-sentence investigation.

5. Language and cultural barriers between Community Corrections Officers and minorities may adversely impact the ability of Community Corrections Officers to do adequate presentence investigations, particularly in cases involving non-English speaking minority offenders.

THE NUMBER AND UNDERREPRESENTATION OF MINORITIES AS LAWYERS AND JUDGES

Lawyers

Conclusions about the number, legal education, and occupational characteristics of minority lawyers is based on the results of a bar survey conducted in December 1988. The results were released in a February 1990 report prepared by George S. Bridges, Ph.D.[8]

1. Asians, African Americans (Blacks), Latinos (Hispanics), Native Americans, and other minorities made up approximately five percent (5%) of the total sample of 6,348 lawyers. Thus, it is estimated that minorities make up about 5% of the bar membership.

2. Non-minority lawyers were much more likely than minority lawyers to work in private practice and earn in excess of $75,000 annually. Minority lawyers were more likely to work as government agency lawyers.

3. More lawyers in the sample received their legal training at the University of Washington Law School than at any other law school. A higher proportion of minorities than non-minorities attended out-of-state ranked law schools[9] (with the exception of Native American lawyers).

4. Across most Washington counties, the proportion of minority lawyers was substantially lower than the percentage of minorities in the general population. In some rural counties, differences between the concentration of minorities in the general population and in the Bar were pronounced.

5. The fact that minorities are less likely to hold positions in law firms is a concern because their apparent levels of educational attainment are, on the average, equivalent to or higher than those of non-minorities.

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[8]George S. Bridges, Ph.D. is a Professor of Sociology at the University of Washington in Seattle, Washington.

[9]There are many rankings of graduate degree programs at major universities. Two commonly cited rankings of law schools were considered for this analysis. These included the rankings in Jack Gourman, 1988 The Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities, Northridge, California: National Education Standards Press; and Scott Van Alstyne, 1982, "Ranking the Law Schools: The Reality of Illusion?," American Bar Foundation Research Journal, No. 3, pp. 649-684.

Judges

Conclusions about the number and underrepresentation of minorities as judges is based on the June 1989 demographic survey conducted by the Task Force and research conducted by Charles H. Sheldon, Ph.D.[10]

1. As of April 1990, of the 371 judges in the state of Washington (Supreme Court, Court of Appeals, Superior Courts, District Courts, Municipal Courts), 16 (4.3%) were identified as racial and ethnic minorities.

2. In 1988, the percentage of minorities on the bench (about 4%) was slightly less than the percentage of minority lawyers (5%). In 1988, the percentage of minorities on the bench (about 4%) was substantially less than the percentage of minorities in the general population (about 11%).

3. A formal judicial screening process exists in King County and for the state appellate courts. However, some aspects of the judicial screening process may require some revision. In some counties, for instance, the perpetuation of an informal system in the selection of prospective candidates may be an impediment to minority judicial aspirants. Also, while appointing authorities may need to have a thorough process of review, they may also need to ensure that the selection process remains open and competitive.

4. With the exception of a minority person serving on the Washington State Supreme Court and a minority person serving on the Pierce County Superior Court, all minority judges serve on courts in Seattle and King County.

THE NUMBER AND UNDERREPRESENTATION OF MINORITIES AS NONJUDICIAL COURT EMPLOYEES

Conclusions regarding the representation of nonjudicial court employees are based on the demographic survey conducted by the Task Force in June 1989 and the study conducted by Joann Francis of the Washington Consulting Group.

1. To the extent that minorities are represented in nonjudicial court positions, they were concentrated in office/clerical categories.

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[10]Charles H. Sheldon, Ph.D. is a Professor of Political Science at Washington State University in Pullman, Washington.

2. Administrator[11] is one nonjudicial job category where minorities were grossly underrepresented. According to a sample of 21 counties, 11 counties showed that minorities were underrepresented in this position in comparison to their availability in the county workforce.

3. Some courts may have equal employment statements. However, only a few courts have implemented comprehensive programs designed to increase minority representation through specific policies and procedures, despite the widespread problem of minority underrepresentation.[12]

4. Although many courts indicate that they have an affirmative action policy or adhere to general county policies, it has not resulted in addressing the state court system's problems with respect to minority employment.

EDUCATION FOR LEGAL PROFESSIONALS AND COURT STAFF

1. There is a need for ongoing cultural awareness education as an effective means of dealing with individual biases and educating legal professionals and court staff about existing institutional biases.

2. The initial efforts at providing cultural awareness seminars met most of the general parameters proposed by the Task Force. The seminars were well attended by legal professionals, court staff and other criminal justice personnel.

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[11] Administrator includes occupations in which employees set broad policies, exercise overall responsibility for execution of these operations, or provide specialized consultation on a regional, district or area basis.

[12] On October 4, 1990, the Washington State Supreme Court adopted a "Equal Opportunity Program" which sets forth the Supreme Court's general policies for providing equal employment opportunities to persons from "protected groups." This general policy applies to the departments which are under the direction of the State Supreme Court and does not apply to other state and local courts.

RECOMMENDATIONS

This section of the report sets forth the various recommendations of the Minority and Justice Task Force. In general, recommendations have been directed at specific institutions or organizations for consideration or action.

FOR THE LEGISLATURE:

1. **Funding for the Supreme Court Minority and Justice Commission.**

The Task Force recommends that the State Legislature appropriate funds for the Supreme Court Minority and Justice Commission for the purpose of (a) conducting additional research as recommended by the Minority and Justice Task Force (see page 18); (b) overseeing the implementation of the Task Force's recommendations; (c) developing ongoing awareness training for judges, other legal professionals and court staff; (d) recommending measures to prevent possible bias in the state court system; and (e) retaining the necessary staff to carry out the work of the Commission.

2. **Development of a Workforce Diversity Program for the Court System.**[13]

The Task Force recommends that the State Legislature immediately fund a Workforce Diversity Program for the court system designed to increase the number of minority employees in the court system. Specifically, the program would set forth the minimum elements that the courts would adopt for improving minority representation among nonjudicial court employees, with additional program elements for those courts with unusual or unique problems.

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[13]A Workforce Diversity Program would be a program specifically designed to address the underrepresentation of minorities in the nonjudicial workforce of the court system. It can be described as follows: "The Washington State Court System will establish specific policies and procedures for annual reporting in order to identify job categories where minorities are underrepresented; will recruit, hire, and retain qualified minorities in order to eliminate existing underrepresentation in specific occupational categories and locations; and will provide an ongoing commitment to the goal of a racial and ethnically diverse nonjudicial workforce."

3. Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.[14]

The Task Force recommends that the State Legislature pass Second Substitute Senate Bill 5953 (2SSB 5953) in the 1991 legislative session. The bill would provide for an implementation plan to expand the jury source list to include licensed vehicle drivers and state identicard holders. Currently, the lists of jurors are drawn from the lists of registered voters.

4. Establishment of a Community Law Education Program.

Based on testimony received at the 1988 public forums, the Task Force recommends funding from the State Legislature to conduct a series of law-related community seminars, which would include a minority outreach component. In 1990, the Asian Bar Association of Washington (ABAW) conducted a series of seminars to help Seattle residents in the Asian community better understand the legal system. Given the success of this program, it is envisioned that similar seminars could be cosponsored by the Supreme Court Minority and Justice Commission, minority bar associations, and other law-related groups for all state residents, particularly minority citizens.

5. Brochures and Seminars on the Judicial Selection Process.

The Task Force recommends that the State Legislature appropriate funds for the Minority and Justice Commission to develop brochures and to organize seminars to inform potential or interested judicial aspirants about the judicial selection process, the laws and practices concerning fundraising, dictates of the Code of Judicial Conduct, and campaign organization and strategies. This program would include a minority outreach component to ensure that potential minority candidates and the minority public are encouraged to participate.

6. Continued Awareness Training and Education.

The Task Force recommends that the State Legislature appropriate funds for continuation of the introductory cultural awareness seminars developed by the Task Force in 1990 and the development of intermediate and advanced seminars. Seminars would include substantive areas of the law and topics on institutional biases.

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[14]There seems to be concern among some opponents of the legislation that persons on the Department of Licensing list would not be qualified jurors, especially with respect to citizenship. It should be pointed out that U.S. citizenship is not confirmed under the present screening process until after a questionnaire is sent to the prospective juror and again during direct examination at impanelment.

7. Passage of the Proposed Minority Criminal Justice Education Act.

The Task Force recommends that the State Legislature pass the proposed Minority Criminal Justice Education Act in the 1991 legislative session. The legislation would establish a conditional scholarship program designed to encourage minorities to serve as prosecutors, public defenders and law enforcement officials in Washington State. The program would cover a student's tuition and fees provided the student serves a certain number of years as a prosecutor, public defender or a law enforcement official. Similar programs for other professionals, especially teachers and public health officials, have been implemented in this state.[15]

8. **Establishment of a Conditional Scholarship Program for Legal Aid Lawyers.**

The Task Force recommends that the State Legislature pass legislation establishing a conditional scholarship program to encourage minorities to serve as legal aid lawyers. The program would be designed to cover a student's tuition and fees provided the student serves a certain number of years as a legal aid attorney.

FOR THE COURTS:

1. **Adoption of the Task Force's Proposed Equal Employment Opportunity Mission Statement.**[16]

In view of the fact that a courtwide Workforce Diversity Program may take a few years to develop and fully implement, the Task Force recommends that all courts consider the immediate adoption and implementation of the Task Force's proposed equal employment opportunity mission statement. This would be a first step in correcting the low number of minority court employees.

2. **Adoption of a Workforce Diversity Program.**

Given the underrepresentation of minorities as nonjudicial court employees, the Task Force recommends that the courts commence immediately to develop a Workforce Diversity Program. (Refer to page 11 for additional information.)

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[15]The proposed Minority Criminal Justice Education Act is the product of an ad hoc Minority Criminal Justice Working Group which includes: Pierce County Prosecutor's Office; Office of Indian Affairs; Commission on Hispanic Affairs; Commission on Asian American Affairs; Commission on African American Affairs; and Minority and Justice Task Force.

[16]The full text of the Task Force's proposed Equal Employment Opportunity Mission Statement will be included in the Appendix of the Task Force's Final Report to the Legislature, the courts and the public. This report will be available as of December 30, 1990.

3. Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.

The Task Force recommends that the courts support and sponsor Second Substitute Senate Bill 5953 (2SSB 5953) in the 1991 legislative session. The bill would provide for an implementation plan to expand the jury source list to include licensed vehicle drivers and state identicard holders. Currently, the lists of jurors are drawn from the lists of registered voters. (Refer to page 12 for additional information.)

4. Continued Awareness Training and Education.

The Task Force recommends that issues involving racial and ethnic bias in the court system be a permanent component of the new judges' seminars, as well as integrated throughout the ongoing education curricula provided to judges and court staff.

5. Increase the Number of Minorities Hired as Bailiffs, Law Clerks, Magistrates, and Commissioners at all Levels of the Judiciary.

The Task Force recommends that all presiding judges carefully review their evaluation and selection policies and procedures and develop personnel policies and procedures designed to improve the number of minority bailiffs, law clerks, magistrates, and commissioners.

6. Measures to Encourage Cooperative Approaches Between Tribal and State Courts.

The Task Force recommends that the Supreme Court and the Office of the Administrator for the Courts develop measures to assist all state courts in improving cooperation and communication between the tribal and state court systems, especially on issues involving child custody matters.

The Task Force also recommends that tribal court judges, who are interested, be integrated into the membership of the appropriate judicial associations. The same cooperative effort should be considered by other relevant court management associations (e.g., Superior Court Administrators).

7. Conduct Educational Programs for Court Interpreters.

The Task Force recommends that the Office of the Administrator for the Courts provide funds for the Court Interpreters Advisory Committee to conduct continuing educational programs for court interpreters.

8. Development of a Complaint Referral Process or Procedure.

Given the number of complaints received at the public forums and throughout the Task Force's existence, the Task Force recommends the development of a procedure for processing such complaints, perhaps through the appointment of an ombudsman. The Task Force also recommends that any proposed procedure be reviewed by the Minority and Justice Commission for its advice and recommendations.

9. Support for the Proposed Minority Criminal Justice Education Act.

The Task Force recommends that the Office of the Administrator for the Courts support the passage of the proposed Minority Criminal Justice Education Act. The bill would establish a conditional scholarship program designed to encourage minorities to serve as prosecutors, public defenders and law enforcement officials in Washington State. (Refer to page 13 for additional information.)

10. Support for the Establishment of a Conditional Scholarship Program for Minority Legal Aid Lawyers.

The Task Force recommends that the Office of the Administrator for the Courts support passage of legislation to establish a conditional scholarship program for minority legal aid lawyers. (Refer to page 13 for additional information.)

11. Creation of a Task Force or Advisory Committee to Examine Issues Affecting Persons with Disabilities and Their Access to the Courts.

The Task Force recommends that the Supreme Court create a task force or advisory committee to examine issues affecting persons with disabilities, their access to the courts and their treatment.

12. Staffing for the Supreme Court Minority and Justice Commission.

The Task Force recommends that the Office of the Administrator for the Courts provide sufficient staffing to the Minority and Justice Commission in order for it to carry out its duties and programs. Such staffing should be selected in consultation with the Minority and Justice Task Force or the newly-established Minority and Justice Commission.

13. Funding for the "Juvenile Disposition and Placement Study".[17]

The Task Force recommends that the Board for Judicial Administration (BJA) support the proposed legislation to appropriate funds to the Division of Juvenile Rehabilitation of the Department of Social and Health Services in order to conduct a study to analyze possible disparate treatment of racial and ethnic juveniles within the juvenile justice system.

14. Continued Funding for the Indigent Defense Task Force.

Given the concerns raised by minorities who must rely on public defender organizations, the Task Force recommends that the Office of the Administrator for the Courts continue to fund the Indigent Defense Task Force.

FOR THE WASHINGTON STATE BAR ASSOCIATION AND OTHER BAR-RELATED ASSOCIATIONS:

1. Publication of Information on the Bar Membership.

The Task Force recommends that the Washington State Bar Association collect and publish on an annual basis information concerning the composition of its minority and non-minority membership.

2. Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.

The Task Force recommends that the Washington State Bar Association and other bar-related associations support the passage of legislation to expand the jury source list (2SSB 5953). (Refer to page 12 for additional information.)

3. Increase Minority Representation on Judicial Screening Committees.

The Task Force recommends that judicial screening committees assure adequate minority representation in their composition.

4. Judicial Screening Committees Should Screen for Cross-Cultural Awareness and Sensitivity.

The Task Force recommends that the Bar judicial screening committees consider adopting procedures to determine whether a judicial candidate has had any cultural awareness training or experience in understanding a culturally diverse community.

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[17]The Juvenile Disposition and Placement Study is being proposed by the African American Affairs Commission for the 1991 legislative session.

FOR THE LAW SCHOOLS:

1. **Increase the Number of Minority Law School Students.**

In view of the small percentage of minority attorneys in this state, law schools in the state must be encouraged to recruit more minority students.

2. **Increase Financial Assistance to Minority Law School Students.**

The Task Force recommends increased private and public funding for law schools to recruit and retain minorities.

3. **Instruction on the Effects of Racial and Ethnic Bias.**

The Task Force recommends that law schools include instruction on the existence and effects of racial and ethnic bias in the courts, in the legal system and in the profession.

FOR THE SUPREME COURT MINORITY AND JUSTICE COMMISSION:

1. **Development of a Workforce Diversity Program for the Court System.**

The Task Force recommends that the Supreme Court Minority and Justice Commission assist in overseeing the development of the Workforce Diversity Program described in recommendation number two to the Legislature and the courts. (Refer to pages 11 and 13 for additional information).

2. **Adoption of the Task Force's Equal Employment Opportunity Mission Statement.**

The Task Force recommends that the Commission be responsible for encouraging the courts to adopt and implement immediately the Task Force's Equal Employment Opportunity Mission Statement. (Refer to pages 11 and 13 for additional information.)

3. **Brochures and Seminars on the Judicial Selection Process.**

The Task Force recommends that the Minority and Justice Commission coordinate the publication of brochures and the organization of seminars to inform potential or interested judicial aspirants about the judicial selection process and other relevant issues. (Refer to page 12 for additional information.)

4. Continued Awareness Training and Education.

The Task Force recommends that the Minority and Justice Commission oversee the development and implementation of all awareness training and education involving racial and ethnic bias in the courts. The Commission's collective knowledge and expertise is the only way to ensure that relevant programs and seminars would be delivered to judges, other legal professionals, and court staff.

5. Review of the Complaint Referral Process or Procedure.

The Task Force recommends that the Minority and Justice Commission provide advice and recommendations on the development of an appropriate procedure for processing complaints. (Refer to page 15 for additional information.)

6. Recommendations for Additional Research.

The Task Force recommends that the Minority and Justice Commission conduct additional research. This would include, but not be limited to:

a) a prosecutorial discretion pilot study to examine prosecutorial decision-making and case outcomes involving minority defendants;

b) a bar survey designed to obtain additional information on the reasons why minority lawyers typically receive less compensation that non-minority lawyers and have limited access to law firms;

c) an updated court demographic survey designed to collect current statistical data on the minority composition of judges and court staff;

d) a trial court project designed to enhance the information presented during the educational programs by studying the more subtle forms of bias (e.g., communicative styles, body language);

e) a study of the policies and procedures in the courts with respect to the utilization of minorities as consultants, vendors, suppliers, and those under contract with the courts; and

f) a study of court rules to determine whether they may inherently discriminate against minorities.

OTHER GENERAL RECOMMENDATIONS:

1. **Additional Research.**

The Task Force also recommends that the following research be undertaken:

a) a study to determine whether judges set higher bail for minorities compared with non-minorities and if so, why;

b) a study to determine whether prosecutors recommend higher bail for minorities compared with non-minorities and if so, why;

c) a study to determine whether the person who makes the screening decisions for amenability for release recommend disparate treatment for minorities and if so, why;

d) a study to examine the quality of legal representation afforded minority litigants, particularly in areas of Washington State where there exists few or no minority lawyers despite sizeable minority populations;

e) a study to determine the feasibility of public financing of nonpartisan judicial races; and

f) a study of different types of personal injury cases to determine if minorities receive lower settlement amounts, given the conclusions of the asbestos study which showed that minorities tended to receive lower average settlement amounts.

2. **Judicial Selection Process of Appointing Authorities.**

Appointing authorities are encouraged to continue a judicial selection process which will bring to their attention racial and ethnic minority persons who meet the criteria for appointment.

CONCLUSIONS

Minority Representation in the Profession

1. Minority presence is inadequate both in numbers and in terms of geographical distribution on the benches of the State.

2. The Departments of Social Services and Correction have significant minority service populations, but very few minority Administrative Law judges. This disparity affects the perception of fairness.

3. The justice system involves numerous participants who are not judges, quasi-judicial officers, or court employees, but who are public servants: Attorney Generals, Prosecutors, Public Administrators and Disciplinary Systems. The absence of representative numbers of minorities in these positions affects the confidence in and effectiveness of the system.

4. There are few instances in the Michigan judiciary of majority jurists employing minority law clerks, judicial assistants, or commissioners.

Professional Organizations and Bar Associations

5. Minorities cannot obtain seats on the State Bar Board of Commissioners proportional to their numbers in the profession through the elective process.

6. Sections of the State Bar have not aggressively recruited minority members, in the past.

7. The presence of minority representatives in Committees of the State Bar is a result of an aggressive policy on the part of State Bar leadership.

8. Local bar organizations may not actively recognize their responsibility to encourage and create opportunities for minority involvement.

9. The State Bar Executive Staff does not have adequate representation of minority employees at the executive level.

Employment Issues for Minorities in the Profession

10. Minorities have traditionally been excluded from certain areas of the legal profession. This exclusion is reflected in the low percentage of participation by minorities in private law firms, on law school faculties, with corporations, and in the judiciary.

11. Minorities experience unique difficulties in the profession related to their lack of advancement, lower hiring and recruitment, increased rate of attrition, and lack of access to professional development opportunities. Many of these problems are directly related to disparate treatment based on racial/ethnic bias.

Legal Education and the Impact of Racial/Ethnic Bias

12. There is a small number of racial/ethnic faculty at the five Michigan law schools and an even smaller number of tenured minority professors.

13. The absence of minority law faculty, or their minor presence, directly affects minority students by denying them role models and has an untoward effect on the quality of legal education for all students and the professional development of the law faculty.

14. Law schools have a very important role in educating future lawyers regarding the nature and impact of gender and race/ethnic bias in the profession. Law schools curricula does not adequately incorporate racial/ethnic bias and discrimination discussions into substantive courses, and it is not a part of all professional ethics courses.

RECOMMENDATIONS

Minority Representation in the Profession

1. Progress must be continued toward a representational bench throughout the State through the appointive authority, and by the support and recruitment of minority candidates for the bench.

2. Courts, through their Chief Judges, should appoint referees, magistrates, an quasi-judicial personnel in numbers which accurately reflect the racial/ethnic demographics of the population they serve.

3. The appointing authority should increase the representation of racial/ethnic minority populations in quasi-judicial positions.

4. The appointing authorities should increase the representation of racial/ethnic minority populations in policy-making positions in the offices of the Attorney General, State Public Administrators, Prosecutors offices, and Disciplinary systems.

5. Increase the number of minorities hired as law clerks, judicial assistants, and commissioners at all levels of the judiciary, but particularly at the appellate level.

Professional Organizations and Bar Associations

6. The Supreme Court should use its appointive powers to place minorities in leadership positions and to facilitate advancement within the leadership ranks of the bar. Specifically, the number of Supreme Court appointees to the Board of Commissioners should be increased by at the very least restoring the number to five. Additionally, the Court's policy prohibiting reappointment of their appointees to the Board of Commissioners should be revised to permit appointments for at least two terms, thereby enabling appointees to run for election for State Bar office including the presidency.

7. State Bar of Michigan Bylaws should be amended to delete any requirement that a minimum number of votes be cast for any vacant position on The State Bar Board of Commissions and Representative Assembly.

8. The State Bar of Michigan and local and special purpose bar boards should utilize their appointive powers to place minority lawyers into leadership positions and to facilitate advancement within their ranks.

9. State Bar presidents should be encouraged to continue their efforts to recent years to appoint minorities as committee members and chairs in substantial numbers.

10. State Bar sections must increase their efforts to recruit minority members and must aggressively pursue policies designed to increase the number of minorities serving on the section counsel and as section officers.

11. Rather than await the gradual change which will inevitably accompany a growing number of minorities admitted to practice, the State Bar of Michigan should develop methods of sensitizing local bar associations and special purpose organizations to the more subtle forms of discriminatory treatment, and by persuasion and example end them.

12. The Local Bar Liaison Committee, the "On The Road" publication, the Presidents-Elect Conference and other communications vehicles should be used to raise the consciousness of local and special purpose bar associations to the need for establishing a hospitable atmosphere for minority members.

13. State Bar efforts initiated under the leadership of its Committee on Expansion of Underrepresented Groups in the Law to encourage the Michigan Judicial Institute, The Institute of Continuing Legal Education, and other educational programs to use more minorities on its faculties should be continued. Similar efforts should be directed at State Bar sections to recruit faculty for their fall and spring seminars and their programs at annual meetings. Minorities must be adequately involved as faculty for the Michigan Continuing Legal Education program for new lawyers.

14. Every effort should be made to hire additional minorities for the State Bar's executive staff.

Employment Issues for Minorities in the Profession

15. The State Bar should adopt the recommendations contained in the ABA Task Force on Minorities in the Legal Profession Report of January 1986, and provide leadership and assistance in increasing opportunities for minority attorneys within the profession.

16. The Supreme Court should publicly acknowledge and support the Michigan Minority Demonstration Project and the American Bar Association Minority Demonstration Project. The Court, when appropriate, should encourage the increased participation and expansion of such programs.

Legal Education and the Impact of Racial\Ethnic Bias

17. Michigan law schools should receive the Task Force report, and incorporate consideration of the Task Forces' conclusions and recommendations in the following course areas:

    a. Courtroom interaction: to be included in clinical law and trial practice courses;
    b Ethics: to be included in professional responsibility courses;
    c Substantive areas of the law: to be included in courses covering said areas;
    d. Task Force conclusions and recommendations where appropriate should be included in extra-curricular legal activities, such as moot court programs.

18. Law schools should adopt and follow policies aimed at the recruitment, advancement toward tenure and retention of minority faculty members.

19. Textbooks, course materials and classroom presentations should be reviewed and altered where necessary to eliminate overt and subtle race/ethnic bias.

20. Faculty and administrative policies should reinforce law schools' commitment to train attorneys who will be sensitive to and aware of manifestations of race/ethnic discrimination and its effects.

21. Professors should be taught ways to integrate race/ethnic issue discussions into a range of classes. All professional ethics classes should cover racial/ethnic bias and discrimination as it affects law practice, treatment of fellow professionals and treatment of court users.

22. Law school placement offices should work with professional associations, bar organizations, and the courts to facilitate the entry of minority students into summer clerkships and other opportunities which lead to professional development.

ENDNOTES

Lewis, Wolverine Bar Association, Presentation to the Task Force, November, 1988.

2. The data in this Table was provided by the Wolverine Bar Association, Spring 1989.

3. Archer, Presentation to the Task Force, August, 1989.

4. Letter on file, Attorney General's Office.

5. Court User Survey, p.45.

6. Franck, Executive Director, State Bar of Michigan Presentation to the Task Force, October 20, 1989. The factual information and statistics contained in this section were compiled by the State Bar for the Task Force.

7. American Bar Association Task Force on Minorities in the Legal Profession Report with Recommendations, January, 1986. p.6.

8. ABA Report, Supra. p.23.8.

9. ABA Report, Supra. p.33.

10. Lewis, Supra.

11. The National Law Journal, February 8, 1988.

12. Brooks, "Anti-Minority Mindset in the Law School Personnel Process: Toward an Understanding of Racial Mindsets".

13. Chused, "The Hiring and Retention of Minorities and Women on American Law School Faculties", University of Pennsylvania Law Review, Vol. 137, No.2 December, 1988 p.553.

14. "American Bar Association Annual Report on American Law Schools, 1988.

15. Diamond, "A Trace Element in the Law", American Bar Association Journal, May 15, 1987.

IX. JOINT RECOMMENDATIONS OF THE TASK FORCES

In this Section of the Report, the Task Force joins with the Task Force on Racial/Ethnic Issues in the Courts to present recommendations for fundamental reforms in ethical standards governing lawyers and judges, education for all participants in the court system and implementation of the recommendations of the Reports.

ETHICAL STANDARDS AND DISCIPLINARY SYSTEMS

In its Interim Report, the Task Force recommended the "immediate creation and adoption of rules in both the Michigan Rules of Professional Conduct and the Michigan Code of Judicial Conduct which specifically and clearly create an enforceable ethical standard for lawyers and judges relating to racial/ethnic discrimination". This recommendation was fortified by subsequent testimony of attorney witnesses as well as representatives of the Judicial Tenure Commission and the Attorney Grievance Commission. This testimony emphasized that the Code of Judicial Conduct and the Michigan Rules of Professional Responsibility do not presently contain language which specifically prohibits invidious discrimination or sexual harassment.

This position is consistent with proposed draft revisions to the American Bar Association Code of Judicial Conduct. A proposed new section 2C states:

> "C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.
>
> Note: New section 2C was added to make clear that a judge's membership in any organization practicing invidious discrimination violated the Code."

With the establishment of such national momentum on the issues of discrimination in the profession, many states are currently considering related changes to their own Codes of Conduct. In September, 1989 the Conference of Delegates of the California State Bar adopted by a two-thirds vote the following recommended language.

> A member of the State Bar shall not discriminate in employment, partnership, and compensation decisions, including hiring, promoting, or otherwise determining conditions of employment on the basis of sex, color, race, religion, national origin, ancestry, handicap, disability, age, medical condition or sexual orientation.
> In the statement of reasons accompanying this resolution the California Bar stated:
>
> . . .the Model Code required that "every lawyer. . . conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect and trust" of the public. As a profession and as officers of the court, we seek to enforce and uphold the laws governing nondiscrimination in our society. If we are to inspire confidence, respect and trust. . . we must demonstrate our commitment to the principles contained in the Rule. . .It is not enough to adopt the goals of integration and minority representation without also instituting the rules and procedures which ensure that the legal profession moves beyond rhetoric to reality. [1]

Public testimony and survey responses not only highlighted the need for specific changes in the ethical standards governing these issues, but also pointed out the concerns of the public, attorneys and judges about the effectiveness of the existing disciplinary systems in responding to these issues. The following Tables reflect the perception of both judges and lawyers.

TABLE IX-1

Question: The Appellate System is an effective means of dealing with bias in the Michigan Court System.

(n = 290)	Yes	No	Don't Know
Total	14%	50%	36%
Male (n = 150)	16%	49%	35%
Female (n = 140)	12%	51%	37%
Minority (n = 132)	18%	49%	33%
Non-minority (n = 158)	11%	50%	39%

TABLE IX-2

Question: The Judicial Tenure Commission is an effective means of dealing with bias in the Michigan Court System.

(n = 291)	Yes	No	Don't Know
Total	37%	31%	32%
Male (n = 151)	36%	32%	32%
Female (n = 140)	39%	29%	32%
Minority (n = 132)	38%	35%	27%
Non-minority (n = 159)	37%	27%	36%

TABLE IX-3

Question: The Attorney Disciplinary System is an effective means of dealing with bias in the Michigan Court System.

(n = 288)	Yes	No	Don't Know
Total	27%	41%	33%
Male (n = 151)	25%	44%	31%
Female (n = 137)	28%	37%	34%
Minority (n = 131)	26%	44%	31%
Non-minority (n = 157)	27%	38%	34%

One of the most striking findings for these questions is the number of judges and attorneys who indicate that they do not have a basis for opinion on the effectiveness of these three institutions. Thirty-four percent of the attorneys and twenty-eight percent of the judges surveyed indicated that they "don't know". Of the three systems, the Appellate system is viewed as being the least effective system for dealing with racial/ethnic and gender bias and the Judicial Tenure Commission is viewed by the greatest number of attorneys and judges as an effective means of dealing with bias. The distinctions between majority and minority attorneys on these issues were less dramatic than the clear difference of opinion expressed by these two groups of judges.

EDUCATION

Education is an essential tool in efforts to eliminate race/ethnic and gender bias from the Michigan court system. Bias exists not only in the court system, but in the society which it mirrors. An educational approach is, therefore, appropriate because it focuses on understanding, not on blame.

Judiciary

Of Michigan judges responding to the Task Force survey 77% (n=191) identified education as an effective means of dealing with bias in the Michigan court system. "We need consciousness raising programs. What am I doing which is being perceived by the recipient as being biased when I'm not even aware of it? Don't punish me -- educate me"; "Attitudes must be changed in judges. We control the courts, and the public's perceptions are based on their contact with us."[2]

Similarly, a substantial number of responding judges (62.7%) are interested in attending a program which would discuss the impact of bias on the Michigan court system: "Judicial and attorney education is the

answer to this. Having said that, one realizes how complex this is. A systematic approach is called for"; "A program of education and sensitization after completion of the report at the very latest. These issues demand to be addressed as soon as possible."[3]

Court Personnel

Education of court personnel is an integral part of elimination of bias from the justice system. Their own educational programs, focused on their own functioning, are essential to their understanding of the need for bias-free court operation. They often are the first contact an individual has with the court, and their conduct may be especially significant.

Michigan Judicial Institute

The Michigan Judicial Institute "MJI" provides education to the judiciary and to some court personnel. Statistics provided to the Task Forces by MJI indicate that over the past three years, its faculty shows the following gender and race distributions:

TABLE IX-4 MJI FACULTY

Majority women	20% - 25%
Minority women	0% - 2%
Minority men	4% - 6%
Majority men	69% - 76%

The composition of the 1988-89 MJI Planning Committee was:

Majority women	28%
Minority women	1%
Minority men	3%
Majority men	68%

As reflected in the above statistics, there is a need for expansion of minority and female participation in MJI faculty and planning committees.

Attorneys

Attorney education is also an important component of the elimination of gender and race/ethnic bias from the court system. Austin Anderson, Director of the Institute for Continuing Legal Education "ICLE", told the Task Forces that substantive courses related to race, sex, or age bias "have not been part of ICLE's regular inventory" over the last few years. He also stated that "ICLE has never kept a record of gender and minority participation as faculty -- they are now doing that." As a result of the Task Forces' invitation to address them, Mr. Anderson reviewed programs from [1985-1988] and found that women were 14% of the faculty, and minority presenters were 1% of the faculty.

The State Bar has initiated efforts through its Committee on Expansion of Underrepresented Groups in the Law to encourage ICLE to use more women and minorities on its faculty. ICLE has recently adopted a policy relative to the active recruitment of minorities and women to serve in all capacities. The Task

were impressed with the structure of this recruitment effort.

Law Schools

Judges and lawyers begin their professional legal education in law school. It is the law school environment which forms many attitudes and ideas of the future lawyer or judge. The Task Forces have learned that race/ethnic and gender bias in the law schools can sow the seeds for future bias in the court system. It is for this reason that recommendations are included for education regarding all areas of the legal educational process.

Models for Education

Several states and jurisdictions have successfully initiated educational programs to generate understanding of race/ethnic and gender bias in the courts.[4] These programs have involved various formats:

presenting the Task Force's conclusions and recommendations with discussion of their impact;

overview programs which discuss racial/ethnic and gender bias in a broad area such as 1) racial stereotypes and racial/ethnic biased attitudes in judicial decision making and in statutes; 2) the dynamics of court interaction; 3) substantive law programs, domestic relations, criminal justice;

panel formats which provide many perspectives on issues - panelists can be judges, lawyers, experts, service providers and individuals from the community; and

single issue programs focus on a narrow topic in great detail from many perspectives.

Strong leadership from the Chief Justice and the Justices of their state Supreme Courts have been essential to the success of education programs to eliminate bias in the various states. The belief that "only judges can teach judges" should also be examined. National experience has shown that non-judicial experts can be very helpful in presenting material on bias effectively. "Judge instructors should work with non-judicial experts in the preparation of materials and should participate in these programs as 'translators' who draw out the implications of the social, scientific or other material for their colleagues."[5] Additional attention should be given to the integration of race/ethnic and gender bias issues throughout all educational curricula, as well as in courses specifically devoted to ethics, administration, conduct or courtroom interaction.

IMPLEMENTATION

The work of the Task Forces on Racial/Ethnic and Gender Issues in the Court, has created a foundation for the next steps on the path to a bias free court system. However, the ultimate effectiveness of the Reports can only be measured by the extent to which bias is reduced or eliminated and the extent to which citizen confidence in the courts is increased. To that end, the Task Forces propose the adoption of a plan which they believe to be essential to the realization of the goals envisioned in the Reports. This plan requires the continued leadership of the Supreme Court; the creation of a method for accountability and follow-up; the allocation of sufficient resources to the effort; and an evaluation of the success of the recommendations once implemented.

National experience has shown that the ultimate success of state task force recommendations is, in large part, dependent upon the level of leadership demonstrated by the highest court of those states. To the extent that the Supreme Court strongly and consistently communicates its commitment to system change,

judges, lawyers, court personnel and citizens will work to effectuate such change. The Supreme Court has taken the initiative in attacking bias through the creation of the Task Forces. This leadership has already generated a positive response both in the justice system and from members of the public.

The proposals contained in these Reports are far-reaching and complex. An administrative structure must be created which will possess sole responsibility and oversight for realization of the Reports' recommendations. This will require follow-up on recommendations, monitoring of complaints, creation of statistical databases, identification of additional areas of concern, and the ability to function as an educational resource on bias issues for many system participants. It is absolutely essential that adequate resources be allocated to this effort to accomplish these objectives.

Finally, the Task Forces have submitted to the Supreme Court their best assessment of programs and ideas for change. After implementation, it is essential to determine whether the changes have, in fact, succeeded in achieving the desired end, and to what extent. The evaluation process should identify:

> the extent of the Task Forces' education of judicial, legal and lay communities about race/ethnic and gender bias in the courts;
>
> the extent of implementation of the Task Forces' specific recommendations; and
>
> the extent of reduction of race/ethnic and gender bias in the courts, as a result of these efforts.

It is the Task Forces' recommendation that a Standing Committee on Racial/Ethnic and Gender Issues in the Courts should be established with the following mandates, responsibilities and structure described below

CONCLUSIONS

Ethical Standards and Disciplinary Systems

1. The existing Attorney Rules of Professional Conduct and the Code of Judicial Conduct do not contain specific grievable provisions which prohibit gender or racially or ethnically discriminatory conduct on the part of judges, quasi-judicial officers or lawyers.

Education

2. Judicial education programs are an effective means of dealing with bias in the Michigan court system.

3. A substantial proportion of judges would be interested in attending a program which would discuss the impact of bias on the Michigan court system.

4. Attorney education is necessary to deal with bias in the profession and the Michigan court system.

5. Education of court personnel is necessary to deal with bias in the Michigan court system.

6. Education at law schools is fundamental to deal with bias in the profession and in the Michigan court system.

7. Racial/ethnic and gender bias issues can be integrated throughout educational curricula.

RECOMMENDATIONS

Ethical Standards and Disciplinary Systems

1. Judges, quasi-judicial officers and lawyers should be subject to a specific Judicial Canon and/or Michigan Rule of Professional Conduct precluding inappropriate gender or racial/ethnic comments or actions.

2. The Code of Judicial Conduct (Canon 3) should be amended to add an additional numbered paragraph under Section (A) providing that:

   > A judge shall not engage in sexual harassment or invidious discrimination and shall prohibit staff, court officials and others subject to the judge's discretion and control from doing so. A judge shall prohibit sexual harassment or invidious discrimination against parties, counsel or others on the part of lawyers in proceedings before the judge.

3. The Michigan Rules of Professional Conduct, (MRPC.8.4) should be amended to state:

   > It is professional misconduct for a lawyer to:...
   >
   > (f) Engage in sexual harassment or invidious discrimination.

4. General Court Rules 2.003 and 9.205 should be amended to provide for disqualification on the basis of such precluded behavior.

5. The disciplinary systems for attorneys and judges should actively promulgate policies and procedures designed to increase the confidence level of the public and profession regarding their response and intervention in matters related to discrimination and bias.

Education

The Judiciary and the Courts:

6. Judicial education related to gender and race/ethnic bias in the courts should be permanent component of the new judges' seminar as well as of regional seminars an separate curricula for judges on the bench. It should be presented in at least these form:

   a. Task Forces' findings and recommendations should be presented for all judges c the bench, then for each group of new judges.

   b. Courses should be developed which examine gender and race/ethnic bias as th affect court system interactions and case or controversy outcomes with particul attention to an analysis of race and sex-based "stereotypes, myths, beliefs and bias that may affect judicial decision making" in numerous spheres which affect litigar

INTRODUCTION

The Franklin H. Williams Judicial Commission on Minorities was appointed by the Chief Judge in 1991 to develop strategies to improve the role of minorities in the judicial system. Besides developing new strategies, the Commission is also charged with monitoring and assisting the implementation of recommendations made by the Commission's predecessor study group, the New York State Judicial Commission on Minorities.

The Commission consists of thirteen members. The chair is the Honorable Lewis L. Douglass and the vice chair is Hon. Nicholas Figueroa. One of our commission members, the Hon. William J. Davis was recently appointed to the Appellate Term, First Department. Other Commission members are Hon. Yvonne Lewis, Hon. Cesar H. Quinones, Hon. Rose H. Sconiers, Hon. Charles L. Willis, the administrative judge of the seventh judicial district and Hon. Douglas S. Wong, who was appointed in December, 1995.

The Commission has three private practitioners, Lenore Kramer of the firm Herman & Kramer, Christopher E. Chang, chair of the Judiciary Committee of the Asian American Bar Association of New York and Renee Myatt. The other representatives on the Commission are Robert Reaves, the Chief Clerk of Surrogate's Court, New York County and Dr. Maria Ramirez, the Executive Director for the International Programs in Academic and Cultural Exchanges in Albany, New York.

The Executive Director is Joyce Y. Hartsfield, Esq. and the secretary is Linda Lane.

The Commission meets monthly in New York City and in other cities throughout the State. The Chairman and individual Commission members meet periodically with the Chief Administrator of the Court, and the full Commission meets annually with the Chief Judge.

The Commission would like to thank the Appellate Division's 1st Department, Associate Justice Peter Tom for his tireless dedication in assisting the Commission with its many projects and initiatives.

This is the Commission's fourth annual report.

Highlights of the Commission's activities

during 1995

1. A program by the Commission on diversity issues has become an established presentation at the annual judicial seminar. The Commission has also been involved at training sessions held for new Town Justices.

2. Participation in a diversity seminar for Town and Village Justices.

3. The Commission participated in a program for the training of the Unified Court System's new judges.

4. The Speaker's Bureau continues to reach out to the community by arranging for judges and lawyers to address community groups. The Commission presented an eight week seminar on various legal topics at the High School of Economics and Finance in New York City.

5. The Commission undertook an outreach program to encourage more fiduciary assignments to minority attorneys and to minority nursing/geriatrics specialists who qualify under Article 81 Mental Hygiene Law.

6. The Commission held public hearings in Suffolk County.

7. Biennial newsletters were published by the Commission.

8. Commission members assisted in the planning and as faculty members for the First National Conference on Eliminating Racial and Ethnic Bias in the Courts held in Albuquerque, New Mexico.

9. Commission members participated in the Seventh Annual National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts.

4. RECOMMENDATIONS

1. A summary of the results of both the court administrators survey and the court employees survey should be distributed to all court administrators.

2. Court administrators and others responsible for hiring should practice equal opportunity. Court administrators should take necessary steps to ensure that all court employees and minority groups within appropriate communities are made aware of position openings as they occur.

3. Employment levels within each county of the Judicial Department should more accurately reflect the minority populations within each county.

4. Women and minorities should have more representation within the administrative and supervisory positions.

5. Supreme Court should maintain and report in its annual report data regarding gender and minority distribution by pay grades and applicant flow.

6. In accordance with Iowa Code section 602.1204, the legislature should fund and the Supreme Court should adopt, fund, review, update and implement the Affirmative Action plan.

- An attorney with Legal Services testified of an instance in which one judge suggested to a poverty-stricken woman that, if she could not pay a judgment, she should spend a summer in a state park to save up the money to pay the judgment.[210]

- The Director of the Iowa Coalition Against Sexual Assault reported an incident during an acquaintance rape trial where the defense attorney repeatedly alluded to the victim's problems with literacy. The woman had revealed that she was functionally illiterate until several years prior to trial, but was repeatedly offered materials to read by the defense attorney who would then loudly exclaim that he forgot she had a reading problem. The Director counted that as an instance of class as well as gender bias.[211]

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210 Des Moines Public Hearing.

211 *Id.*

D. RECOMMENDATIONS

1. TRAINING & EDUCATION OF LAWYERS AND JUDGES

a. The Supreme Court of Iowa should require attorneys and judges to complete two hours of continuing legal education during 1993 and two hours every two years thereafter addressing:

1. The impact of race, national origin, ethnicity and sex on issues related to court system interaction and case or controversy outcome.

2. Professional relationships between attorneys and judges where race, national origin, ethnicity or sex is a potential factor.

The two hours should be credited towards the 15 hours CLE requirement. Additional workshops with small interactive groups on cultural differences and on male/female professional relationships should be encouraged. The Commission of Continuing Legal Education should be encouraged to make such workshops eligible for CLE accreditation.

b. The Supreme Court of Iowa should provide each Chief District Court Judge, all judges and those persons in quasi-judicial positions, including court-related boards and commissions, training regarding their role and significance in ensuring an environment of equal opportunity and fairness.

c. The Supreme Court of Iowa should provide to the Judicial Department appropriate training to all court personnel to ensure an environment of equal opportunity and fairness.

d. The Supreme Court of Iowa should actively encourage Bar associations to increase anti-bias training and education.

e. Law firms should adopt and implement policies to prohibit sexual harassment and discrimination on the basis of race, national origin, ethnicity or sex.

- A judge reported that there are a fair number of Spanish speaking defendants who speak little or no English. There are no Spanish speaking attorneys in the judge's jurisdiction and "this language gap is a great concern" to judges. A list is kept of Spanish speaking attorneys for such occasions. However, this judge believes more minority attorneys or bilingual attorneys are needed. "The cost of this program and the infrequency with which we need an interpreter are such that this program is probably not high on anyone's list of priorities."[234]

- One judge reported that, in criminal cases, there are more defendants who are not fluent in English than ever before -- largely migrant Spanish speaking workers. But there are no good translators easily available in any but major cases. "This could disadvantage these people." The judge also observed that more of the Asian immigrant defendants are fluent in English now or have better access to interpreters than was true some years ago, and that no good services exist to translate for the hearing impaired.[235]

- An attorney provided the opinion that the Hispanic population receives better access to legal representation in criminal or juvenile actions than in civil actions. In criminal matters, there are frequently court-appointed counsel and interpreters provided at no cost to the defendant. In simple civil matters, many Hispanics are unrepresented due to the unavailability of bilingual counsel and the cost of hiring a private interpreter. Even though members of the bar may provide *pro bono* services, in many instances it is difficult to determine if clients actually understand the nature of the action or the contents of the documents they sign. On several occasions this attorney has been forced to use a bilingual child of a client to interpret the contents of a rental agreement and to explain Iowa's financial responsibility laws in a driver's license revocation proceeding.[236]

The Bureau of Refugee Services, the League of Latin American Citizens (LULAC) and the Iowa Commission on Latino Affairs have issued extensive reports and recommendations calling for the implementation of a better system for training, locating, and compensating interpreters and for improving access to the courts for linguistic minorities.

234 Comment to Judge Survey.

235 *Id.*

236 Comment to Attorney Survey.

D. RECOMMENDATIONS

1. In accordance with Iowa Code 622A.7 (1991)(enacted in 1984), the Supreme Court of Iowa should adopt rules within six months of this Report governing the qualification and compensation of interpreters. The Legislature should provide funding for the implementation of the requirement it enacted.

2. A central, comprehensive list of interpreters should be maintained to facilitate the use of qualified personnel.

3. Financial incentives -- such as the award of a merit step or the reimbursement of tuition -- should be created to encourage court personnel to develop language capacities needed in that district.

4. Bilingual and multilingual persons should be actively recruited to work for the Judicial Department and such language ability should be recognized as a valuable asset for employment.

5. Community colleges and other educational institutions should be encouraged to develop programs to train persons who provide court interpreting, legal translations, and bilingual and multicultural court support services.

6. The Supreme Court should give serious consideration to the implementation of the recommendations made by the League of United Latin Americans Citizens (LULAC), and by the Bureau of Refugee Services of the Iowa Department of Human Services following this Chapter as Endnotes I and II, respectively.

7. The Legislature should provide funding to enable the Supreme Court to implement the recommendations contained in this Chapter.

"There were two or three other Jury Commissioners at that point, and I would hear comments like, 'Well, that's a doctor's wife, she would make a good one,' or 'I play bridge with her, she would do a good job' or whatever. Which led me to believe that there was something subjective going on here: people knew people, thought that they would do a good job and gave them the opportunity of just getting in the pool.

"Some time after that, when I was to be reappointed, one of our local judges said, 'We can't use her. We cannot have someone who is saying that they are deliberately picking black folk. We just cannot have that.' I thought that was very odd, because we have other Jury Commissioners constantly picking white folk so I didn't see anything wrong with one black person trying to see that some other black folk got at least an opportunity to be in the pot and then perhaps an opportunity to get chosen from the pot. Of course, we all know that if the names never go in then you don't have to worry about that, because if you are not in the pot, no one is going to pick you out."[246]

In addition, it was recognized that, once source lists are obtained, the composition of the available jurors made available may change based upon the process of selecting, summoning, qualification, and excusal in both drawing the jury panel and seating specific juries. Many prospective jurors ask to be excused because of economic and employment pressures. These pressures weigh more heavily on low-income and/or self-employed persons and are likely to have a disproportionate impact on minorities. Jurors are currently paid only $10 per day for their service. While many, such as full-time employees, lose no pay due to jury service, others, perhaps self-employed or part-time employees, suffer a significant financial disadvantage by serving on a jury. If jurors are to be paid, the amount should more accurately reflect the personal financial contribution they are making. Many jurors are reimbursed only for mileage as an out-of-pocket expense.

The Task Force recommendations focus on each of the stages discussed in this Chapter. Particularly in a state like Iowa, where the number of minorities in a given community may be small, every effort must be made to select and to encourage people to serve as jurors, to increase the chances that juries will be racially diverse.

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246 Waterloo Public Hearing.

E. RECOMMENDATIONS

1. a. The consolidated source list[247] anticipated in Iowa Code Section 607A.22 to be provided by applicable state and local governmental officials should be provided directly to the Clerks of Court.

   b. Names to be used from the consolidated source list, as anticipated in Iowa Code Section 607A.22, should be randomly chosen and consist of either a certain number of names or a certain percentage of all the names in the consolidated list.

   c. All discretion in selection should be eliminated. To this end, the Task Force recommends the elimination of jury commissions.

   d. Section 607A.22 of the Iowa Code should be amended to require monthly updating of the consolidated list.

2. a. Jury questionnaires sent to potential jurors should request prospective jurors to voluntarily indicate their race, with an explanation of why the information is requested.

   b. The Supreme Court should direct Clerks of Court to obtain census figures regarding the percentage of minorities over 18 for a given regional area. Those numbers should be used to determine whether or not minorities are being appropriately represented in a given jury panel.

   c. Statistics on the race and gender of jurors should be obtained immediately to facilitate future studies and to assist in attaining representative jury pools in the future.

   d. If, six months after the date of this Report, it is demonstrated that there is a racially disparate impact in jury selection, other selecting methodology including oversampling of minorities, should be used as a method to ensure that the representation of minorities in the jury panels approximates the percentage of minorities in the county's population.

   e. The Supreme Court should undertake further study in this area once statistics have been maintained.

3. a. The pay for jurors should be increased.

   b. Reimbursement should be made to low-income jurors for day care and/or elderly care expenses incurred because of jury service.

4. The legislature should adequately fund the implementation of these recommendations.

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247 Under Iowa Code Section 607.22, the consolidated source list contains all names in the voter registration list or the driver license list, but does not duplicate an individual's name within the consolidated list.

both juvenile and adult criminal systems, in the future both may be studied by CJJP on a regular basis.

The CJJP is studying and assessing available data, from arrest through disposition and probation, of two years of class "C" nonviolent felony convictions, to help their Work Group on the Disproportionate Incarceration Rate of African Americans come to some conclusions and recommendations. The Supreme Court of Iowa should review the findings once the report is complete.

On many occasions during the Task Force's public hearings, people testifying spoke of the public's general lack of understanding of how the court system works and of how the public could gain access to it. A centralized referral office should be established to provide information regarding the various components of the court system, and to provide information regarding how the court system works. Some of this information also should be available at courthouses.

D. RECOMMENDATIONS

1. Statutory guidelines in Iowa Code section 811.2(2) (1991) regarding the appropriate criteria to use for determining the conditions of pretrial release should be used uniformly.

2. Statutory guidelines in Iowa Code Chapter 907 (1991) regarding the appropriate criteria to use for determining sentencing should be used uniformly.

3. The Criminal Justice system should strive to increase employment opportunities for minorities and women at critical points in the criminal justice system, including county attorney staff, pretrial release staff, public defenders and presentence investigators.

4. Sensitivity training should be provided for judges, attorneys and court personnel regarding racial, ethnic and cultural differences, including the dynamics of domestic violence and sexual assault and the overt and subtle ways bias may manifest itself.

5. Presentence investigation officers, parole officers, juvenile court personnel, and others employed within the criminal justice system should receive cultural sensitivity training, and training regarding racial/ethnic and gender bias.

6. The results of the Criminal Case Study should be discussed at the annual judges conference. The present and future court system database should be monitored periodically, and patterns of racially associated disparities noted, publicly disseminated, and specifically brought to the attention of Districts where disparities occur.

7. County attorney offices should be required to keep records of the charges on initial arrest, the charges ultimately filed, the arrests they chose not to prosecute, the reasons they chose not to prosecute, and the race and gender of the alleged perpetrators.

8. The Supreme Court of Iowa should watch for and review the results of study being conducted by the Division of Criminal and Juvenile Justice Planning regarding two years of class "C" nonviolent felony convictions.

9. Criminal defendants should be advised that court-appointed attorneys will be paid by the state regardless of whether they win or lose the case. They also should be advised that, at the disposition of their case they may be required later to reimburse any court-appointed attorney fees.

10. The Judicial Department should develop a brochure to explain the criminal process generally, what participants in the court process might expect to happen, where participants can go to receive answers to questions, and what additional help is available.

11. The Iowa State Bar Association should develop educational programs explaining the criminal system for schools, and brochures for distribution at police stations, county attorneys' offices, courthouses, or other appropriate public places.

12. The Supreme Court of Iowa and local courts should work with the state and the local bar associations to establish a system to disseminate information referenced in Recommendations 10 and 11 above.

13. The Division of Criminal and Juvenile Justice Planning should access information, and make it easily retrievable on a uniform statewide basis, regarding the trends and patterns evolving related to the various stages of the criminal process as regards to the race and sex of defendant and crime reporters or crime victims. The court system, including the Department of Corrections Division of Community-Based Corrections, should keep data similar to that used in the Criminal Case Study, as it relates to pretrial release, to be made available to the Division of Criminal and Juvenile Justice Planning. This same organization should be furnished additional data, all data to be included in their annual report, including:

    a. Data regarding whether a defendant used a privately-retained attorney, a court-appointed attorney, a public defender or appeared *pro se.*

    b. Data regarding charge reduction and plea bargaining by race and sex of defendant (this could then be compared to charging).

    c. Data regarding the makeup by race and sex of jury pools and ultimate jury members selected.

    d. Data regarding the ultimate court disposition of each case, with the race and sex of the defendant.

    e. Data regarding presentence investigation recommendations by race and sex.

    f. Data regarding prior adult commitments, prior juvenile commitments, education and age of defendants.

    g. Data regarding probation revocation.

14. The Legislature should provide necessary funding to implement these recommendations.

Chapter X

IMPLEMENTATION

The most important steps to be taken to eliminate bias in the Iowa court system begin after completion of the charge of the Equality in the Courts Task Force. The implementation of the Task Force's recommendations is crucial to the realization of the goal of providing equal application of the judicial process to all controversies and insuring that participants do not receive disparate treatment because of race, sex, national origin, or ethnicity. As the Supreme Court said in its Order creating the Equality in the Courts Task Force:

> Disparate treatment, on any such basis, harms the quality of the judicial process. . . . To ensure that the judicial system has the respect, trust, and confidence of the public, it is essential that all vestiges of bias be eliminated.[498]

The Task Force received numerous comments over the course of its two-year assignment warning that, though the goals of the Task Force have been noble, the findings and recommendations will mean nothing if the Final Report sits on a shelf collecting dust. The value of the Task Force's efforts will be undercut unless this last phase of dissemination of information, monitoring of trends and implementation of recommendations is adequate.

With that in mind, the Task Force makes the following final recommendation.

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498 *In the Matter of the Appointment of a Commission on Equality in the Courts.* Order, Supreme Court of Iowa, December 4, 1990. A copy of the Order is included in this Report as Appendix A.

Recommendation

A COMMITTEE OR TASK FORCE SHOULD IMMEDIATELY IMPLEMENT THE RECOMMENDATIONS OF THE EQUALITY IN THE COURTS TASK FORCE. THIS COMMITTEE OR TASK FORCE SHOULD INCLUDE REPRESENTATION FROM THE PRESENT TASK FORCE, THE JUDICIARY, COURT ADMINISTRATION, BAR, ACADEMIC COMMUNITIES IN LAW AND THE SOCIAL SCIENCES, AND LAY PERSONS.

Two critical activities must be pursued over the long term.

1. The Supreme Court and the implementation committee should insure that educational programs continue to incorporate materials on gender and racial/ethnic bias in the courts, both in courses principally devoted to antidiscrimination topics and in the entire range of substantive law courses. The implementation committee should disseminate and publicize the findings and recommendations included in the Final Report and any additional findings and recommendations it makes during the course of implementation.

2. The implementation committee should monitor positive changes and identify new problem areas. Specifically, the committee should seek funding for additional studies as recommended in this report, for education as recommended in this report, and for the implementation of other programs and recommendations made in this report. Every other year, the committee should review the progress made toward implementing the recommendations and reducing bias. It should assess the extent to which the findings and recommendations of the Task Force are being integrated into judicial and legal education courses and programs. It should identify new problems rooted in gender and racial/ethnic bias, suggesting appropriate remedial action.

EXECUTIVE SUMMARY

Equality is the Mother of Justice

Plato

OVERVIEW

The Final Report of the Commission to Study Racial and Ethnic Bias in the Courts shows that discriminatory behavior, based on racial bias or stereotype, exists throughout the courts. This Executive Summary highlights many of the Commission's key findings and recommendations. Members of the Commission urge that the complete report be read to gain a full sense of the underlying facts and the urgency of these issues. Commission members believe that only through a shared level of awareness can we make significant changes in our system of justice.

The Commission held public hearings and focus group meetings across the state in order to solicit a wide range of public input. Members of the Commission's six task forces surveyed bench and bar members extensively concerning employment practices, courtroom decorum, bias in criminal cases, civil damages, family law cases, and interpreters. The Commission also conducted an extensive research project on the composition of jury pools and juries and examined the effect of bias on sentencing. The Commission's Final Report contains nine chapters: **Language and Cultural Barriers, Juries and Jury Pools, Care and Protection Proceedings, Sentencing, Appointment of Judges, Attorneys in the Courts, Fee-Generating Court Appointments, Employment in the Courts, and Education and Training.**

LANGUAGE AND CULTURAL BARRIERS

Access to justice requires an understanding of the legal system and an ability to communicate effectively. When the Commission examined the use, availability and qualifications of court interpreters, it found, however, that non-English speaking participants in the legal system are more likely than English-speaking participants to have unsatisfactory results from the court process, including fewer restraining orders in domestic violence cases and higher bail in criminal cases. Non-English speaking defendants are more likely than English-speaking defendants to lose the custody of their children when interpreter services are unavailable in the early stages of a care and protection proceeding.

Although Massachusetts law gives every non-English speaker involved in a legal proceeding the right to an interpreter,[1] there are not enough qualified interpreters for the many different languages and dialects used by litigants and witnesses. The Commission found that qualified interpreters were frequently unavailable at all levels of legal proceedings, particularly at times other than court hearings. Also, there are few or no bilingual staff in most clerks' offices.

Judges occasionally appoint unqualified interpreters because of the limited availability of qualified interpreters, the absence of a uniform system for training and assigning interpreters, and the lack of training and understanding of the need for specifically trained,

qualified interpreters to protect legal rights. County bar advocate programs, which administer lists of attorneys qualified as defense counsel in criminal cases, do not give preference to bilingual attorneys when compiling their lists, resulting in an underrepresentation of bilingual attorneys for non-English speaking defendants.

At public hearings and focus group meetings, people told of judges who ask husbands to act as interpreters for their battered wives, interpreters who act for both sides of a criminal case, and attorneys who claim to be bilingual but who are unable to communicate with their clients. Other situations were described about persons who come from cultural backgrounds so different that they lack any fundamental understanding of the role of an American court and have no organized means of learning about the courts. Finally, the focus group discussions revealed an administrative court structure that contains two interpreter services which often conflict with one another, further hampering the ability of judges to assign, or attorneys to use, interpreters effectively.

RECOMMENDATIONS

- Interpreter services should be unified under one service. The Chief Justice for Administration and Management (CJAM) should assume responsibility for unifying the system.
- The Trial Court should use only "qualified" or "certified" interpreters.
- The Trial Court should create and fund a coordinated statewide system for the provision of available and qualified interpreters and interpreter services in all civil and criminal proceedings of any nature before a judge or clerk magistrate.
- The courts should make an effort to hire more bilingual staff members, especially for positions where there is a great deal of public contact.
- Bilingual staff members should be used when necessary, but appropriate reductions in workload should be made when these staff members are away from their everyday duties.
- A means of communicating with non-English speakers, such as the AT&T Language Line, should be implemented to ensure effective and non-biased access to all court services, including the clerks' offices.
- Forms should be made available in many languages so that non-English speakers will not need the assistance of an interpreter to complete them. This is particularly important for people seeking restraining orders in domestic violence cases.

- Attorneys must learn to use interpreters effectively and should press for qualified interpreters at all stages of case preparation, trial, and post-trial.
- The Committee for the Administration of Interpreters should be reconstituted and should immediately assume its statutory oversight functions of enforcement of the standards for interpreters.
- Interpreter services should be arranged or provided to make dispositions effective (e.g., interpreters provided for non-English speaking individuals who are required to attend alcohol or other education and counseling programs).
- Every court should have a contact person who is responsible for filing requests and coordinating interpreter services.
- The courts and other interested groups should encourage colleges, high schools, and vocational schools to offer training for court interpreters.
- The courts, faculty, and alumni should support the efforts of law schools to encourage students to continue language studies.
- The Chief Justice for Administration and Management should provide educational training that alerts judges and other court personnel to interpreter issues and that increases their awareness of the need of non-English speakers for interpreters.

Juries and Jury Pools

A jury of diverse minority and ethnic composition is more likely to make decisions that are free of bias and prejudice because the biases and prejudices of individual jurors will be challenged and moderated by their peers. The notion of fair and equal justice rests upon this faith in representative juries. It was with this in mind that the Commission sought to examine how a jury pool is created, and, once selected for a trial, how racial and ethnic considerations might affect how a jury will respond.

The Commission found that minorities are underrepresented on juries even when the Office of Jury Commissioner selects the jury pools from communities with large numbers of racial and ethnic minorities. This underrepresentation has two principal causes: the failure of municipalities to provide accurate, complete, and verified resident lists, and the low response rate of minority residents properly served for jury duty. When Commission members analyzed the actual makeup of the Suffolk County jury pool, which serves the City of Boston, they found that the highest percentage of prospective jurors who failed to respond to a summons to jury duty live in areas with high percentages of racial and ethnic minority residents. This problem is not confined to Suffolk County. A comparison of the

report submitted by the Hampden County District Attorney's Commission on Civil Rights with the results of the Commission's study identified many areas of similarity and revealed consistent findings. There is also a perception that racial and ethnic biases among jurors often have an adverse effect on deliberations of guilt or innocence in criminal cases and on the calculation of damages in civil cases. A significant percentage of minority judges believe that jurors respond more favorably to white judges than to minority judges.

RECOMMENDATIONS

- The composition of a jury should reflect the racial diversity of the community.
- When taking the annual census, it is important that municipalities aggressively attempt to contact non-responsive residents by follow-up reminders such as telephone calls, bilingual notices, and neighborhood canvasses by multicultural and/or bilingual workers.
- An effort should be made by municipalities to gather mailing addresses when different from residential addresses. Census forms should request information on race, ethnicity and native language to assist the Office of Jury Commissioner to create diverse racial and ethnic jury pools.
- Communities with significant numbers of non-English speakers should recruit bilingual staff from the community, especially as census takers, to canvass non-responsive or otherwise uncounted residents for the annual census.
- The Office of Jury Commissioner should continue its efforts to press for the enforcement of the law that requires each city and town to provide an accurate resident list for the compilation of jury pools.
- The Office of Jury Commissioner should recommend to the Massachusetts Legislature that it amend G.L. c. 234A, §10 to require that towns and cities request mailing addresses.
- The Office of Jury Commissioner should establish specific policies and procedures for collecting and maintaining statistical data on the race, ethnicity, gender and age of those who report for jury duty and those who actually serve on panels. An annual report of these findings should be issued.
- The Office of Jury Commissioner should contact those individuals who fail to report for jury duty and inform them of their legal obligation to serve and press for enforcement of the law against those who refuse.

- The Trial Court should review the need for trial judges to conduct an individual *voir dire* to determine the racial or ethnic bias of prospective jurors.
- Each department of the Trial Court should educate juror pools on cultural and racial bias, perhaps through films or other training devices, when the jury pool reports for service.
- The courts, in conjunction with bar associations and law schools, should develop a community education program, including school curricula at all levels, to educate the public about the jury system and the obligation to serve. Community education should stress the importance of participation by a diverse section of the community and the effect of jury bias on participants in the court system.
- The Trial Court should encourage participation in jury duty by offering child care to those who respond to a summons.
- The Attorney General should bring suit against municipalities that fail or refuse to comply with the requirement to compile accurate resident lists..

Care and Protection Proceedings

Unfamiliarity with cultural norms or reliance upon racial and ethnic stereotypes may contribute to a growing tendency to place black/African American and Hispanic children in foster homes at a rate that far exceeds that of other racial groups.

Non-English speakers or those from different cultures may lack access to state services such as mental health facilities, alcohol programs, abuse programs and other therapy programs because many support programs have limited or no staff competent to serve a multilinguistic and/or multicultural clientele.

Judges, court personnel, and attorneys often have a limited understanding about how to use interpreters effectively. This often means that non-English speakers are unable to participate fully in, or to understand, care and protection proceedings because of inadequate interpretive services. When interpretive services are unavailable or ineffective in the early stages of a care and protection proceeding, non-English speaking defendants are more likely than English-speaking defendants to lose the custody of their children.

Recommendations

- The Trial Court should assume responsibility for the training of all judges and court personnel in how to work with families from different cultures and how to access resources to provide support for families in trouble.

- The Trial Court should study the type and effectiveness of interpreter services and make recommendations on their use. Judges, court personnel and attorneys must be trained on how to use interpreters effectively.
- The Trial Court should seek the means to create or support the creation of a central multicultural resource center that would offer a directory of culturally appropriate resources, including multilingual advocates, expert witnesses, and mentors.
- Any judge assigned to a care and protection case involving a non-English speaking party should decline to proceed with the case until each non-English speaking party has an assigned counsel who has the immediate ability, whether through personal language skill or court-certified interpreter, to communicate with the client.
- In a care and protection proceeding, the court should inquire about the need for interpreters and make arrangements for assigning interpreters as needed for the 72-hour hearing as soon as the Department of Social Services files the initial petition.
- At the initial 72-hour hearing following the filing of the petition, one judge should be assigned to hear the case through its final disposition, including any subsequent petition for termination of parental rights.
- The Trial Court should undertake a statistical study on the racial and ethnic characteristics of all DSS court-related cases and the disposition by each court of every case. In addition, it is important that the Trial Court encourage culturally-appropriate placement decisions.
- The Committee for Public Counsel Services, the Department of Social Services, and other groups responsible for training lawyers and other care and protection professionals should incorporate in all mandatory training packages cultural awareness training, both as a separate session and as an integral part of each substantive session.
- The Committee for Public Counsel Services should develop a centralized data bank of all attorneys and investigators who speak a language other than English, and provide such data to the court.

SENTENCING

Racial and ethnic bias may influence sentencing decisions by judges. The Commission's attempt to test this hypothesis by an empirical study of sentencing patterns in the Superior Courts failed because most of the available data was incomplete or not computerized.[2] The state has no unified and computerized system of data collection that can track and compare sentencing differences in criminal cases. Nonetheless, Commission members are deeply concerned that there may be disparity in sentencing.

RECOMMENDATIONS

- The Supreme Judicial Court should undertake, on its own or through the Massachusetts Sentencing Commission, a comprehensive study of sentencing patterns to determine whether there is any disparity related to racial/ethnic bias.

  A sentencing study should include a detailed analysis of the sentencing patterns of young male offenders. This analysis should be conducted on serious crimes committed by white, black/African American, Hispanic and Asian American males by comparing the rates of incarceration and sentence length across these groups.

- The Trial Court should produce and distribute regular reports of sentencing patterns by race and ethnicity.

- The Office of the Commissioner of Probation, the Committee for Public Counsel Services, the District Attorneys' offices, the Trial Court and local police departments should develop coordinated information systems which will allow comparison of the data each has collected. The District Attorney's office for each county should be the primary agency responsible for collecting the data on case processing.

  As agencies develop new criminal justice information systems or update existing systems, information should be collected, using the Bureau of the Census categories, on the race, ethnicity, and national origin of defendants and victims.

  Criminal justice information systems should collect the data needed to make comparisons between similar cases that differ by race of the defendant. This information should include the defendant's prior criminal history, substance abuse history, employment history, and family situation.

- The courts should establish a universal case numbering system to permit cases to be studied with consistency as they move from one criminal justice agency to another. The Office of the Commissioner of Probation and the Criminal History System Board should be involved in any planning for the development of such system-wide identifiers.

APPOINTMENT OF JUDGES

Of the 328 judges who sat on the trial court bench as of March, 1994, there were 29 minority judges (8.8%). There are twenty-one black/African American judges, five Hispanic judges, two Asian American judges and one Cape Verdean judge. The first Hispanic judge was appointed in 1979, and the first Asian judge was appointed in 1989, sixty years after the first Asian was admitted to the Bar. Minority judges believe that the interview and investigation process is unfair to minority candidates for judgeships.

Minority judges believe, for example, that their applications are scrutinized more closely than those of white applicants, and that higher standards are set for minority applicants.

A majority of all judges surveyed believe that minority judges are underrepresented on the bench in the sense that there are only a scattering of minority judges sitting in communities outside of Boston.

Minority judges are underrepresented in administrative positions such as presiding justice and regional administrative judge. Minorities are also underrepresented in clerk and clerk-magistrate positions, which is particularly important because of their quasi-judicial role and public visibility.

Recommendations

- Both the Judicial Nominating Council and the bar associations should undertake outreach efforts to describe the procedures and process for judicial appointments. The application package should include a list of qualifications for each vacancy, the outline of the process for appointment, and an estimated timetable.
- The composition of each of the gubernatorially-established screening panels should reflect the diversity of the greater population. All individuals who serve on a screening panel should attend cultural awareness training.
- Applicant information data should be maintained by the Governor to guard against inappropriate screening-out of minority candidates.
- Applications should be acknowledged in writing and applicants kept informed of the status of their applications.
- Efforts should be made to ensure that minority applicants are considered for all appropriate vacancies, not just those in communities with large minority populations.

Attorneys in the Courts

Trust in the judicial process depends in large measure on how those who use and work in the legal system view the impact of the daily interactions that occur in the courthouses of the Commonwealth. The Commission's study found that race and ethnicity are determining factors in how judges, colleagues, other courthouse personnel and jurors perceive minority attorneys.

What does the legal profession say about the extent of racial and ethnic bias in the Massachusetts courts? The Commission members attempted to answer this question by tabulating the aggregate response to eleven key questions that measured direct observation or experience.[3] After applying a set of filters, the survey indicated 58.1% of responding attor-

neys had observed or experienced at least one of the eleven forms of bias "sometimes," "usually," or "always."[4] This means that, if the Commission surveyed every attorney in a potential sample of 16,566 attorneys, 9,628 attorneys, would have answered that they had observed or experienced one of the eleven key forms of bias "sometimes," "usually," or "always."[5] Almost 57% of white attorneys and 87.3% of minority attorneys reported these observations. These figures are solid evidence of the nature and extent of perceived bias in the courts.

Recommendations

- The Supreme Judicial Court should mandate diversity training for all court employees.
- The Trial Court should establish a specific process whereby complaints about racially-biased treatment of attorneys by court personnel can be filed and investigated.

Fee-Generating Court Appointments

Each year courts appoint thousands of attorneys to positions of trust and fiduciary responsibility, largely to represent indigent defendants in criminal cases or indigent parents and children in civil proceedings when the state intervenes in their family. Some of these court appointments are constitutionally or statutorily required, others are discretionary. All of these appointments are made by judges and most of them are paid for by the state or by private parties.[6]

The Commission found a number of bias-related problems for minority attorneys who seek court appointments. A majority of minority attorneys have not received any appointments as a receiver/trustee, guardian *ad litem* or master within the past 5 years. The selection and appointment of counsel in these cases is often a subjective process controlled by the discretion of the court generally without benefit of objective standards, including required training courses.

The Committee for Public Counsel Services (CPCS), a state agency, trains and certifies attorneys as eligible for appointment as defense counsel in criminal cases. Local county bar advocate programs, however, actually administer the court appointments in criminal cases and CPCS has insufficient resources to provide the necessary oversight of these programs. The bar advocate programs often have significant waiting lists, which means that few minority attorneys "make the list" because they tend, as a group, to have fewer years of practice experience.

Recommendations

- The Supreme Judicial Court should adopt a comprehensive rule governing fee-generating appointments for all departments of the Trial Court. This rule should:

1. require each court to maintain lists of attorneys qualified for fee-generating appointments. The lists should be compiled periodically, after public notice of the availability of appointments with the minimum qualifications for such appointments.

2. indicate whether the attorney or other professional has specialized skills, such as bilingual skills. Lists should not be limited geographically, but every effort should be made to permit those who qualify to apply to as many locations as the individual believes he or she can serve.

- Each court department should be required to have a utilization plan to insure that all individuals on its lists of attorneys qualified for fee-generating appointments have the same opportunity for being appointed.

- The Chief Justice for Administration and Management should monitor compliance with the SJC rule and report annually to the Justices of the Supreme Judicial Court and the Chief Justices of the Trial Court departments. In addition, the Trial Court should examine the pattern of appointments by selected courts in state intervention cases.

- CPCS should revise their requirements for bar advocate programs to include the following:

1. All attorneys who provide services should be required to attend training in cultural diversity;

2. A complaint mechanism should be established to provide consumers an opportunity to report dissatisfaction with the services provided by assigned counsel;

3. Bar advocate programs, at a minimum, should adopt and frequently publicize uniform standards for appointment to bar advocate lists. These standards should require, at a minimum, a fair utilization plan, including the ability for individuals from other counties to register.

- CPCS should continue its affirmative efforts to recruit minorities and bilingual attorneys as well as require strict adherence to the affirmative action contract provision as a condition for contract renewal.

- CPCS should monitor carefully the quality of services provided by bar advocates. Judges, court personnel, and anyone appointed as a guardian ad litem for a child should be required to attend continuing education programs on developmental, psychological, cultural diversity and evidentiary issues pertaining to children.

EMPLOYMENT IN THE COURTS

Most minority employees who testified at focus group meetings and those members of the public who testified at the Commission's public hearings believe that the Massachusetts Judiciary does not offer minority job applicants an equal opportunity for employment. There is a strong need for a greater minority presence in the courtroom and the clerks' offices.

Although the courts have made progress in the past fifteen years, there remains much to be done in the area of recruitment and employment. Racial minorities are not represented in any of the upper management positions in the court system, and there are few career opportunities available for those individuals at entry-level positions.

The Commission found that hiring lists are often outdated or not comprehensive although the creation and implementation of an affirmative action plan has helped the Trial Court to increase its hiring of minority job applicants. There remains a perception, however, that minority employees are either recent hires stacked in entry level positions or frozen in lower level positions.

The Commission also found significant discrepancies from county to county in the hiring of minority personnel. For example, the Suffolk County courthouse complex serves Boston and is ten minutes by public transportation from the Middlesex County courthouse complex, which serves Cambridge and surrounding communities. Suffolk County employs twice the percentage of minority court personnel as does Middlesex County.

RECOMMENDATIONS

- The Trial Court should adopt a systemwide affirmative action plan and uniform hiring policy; and immediately hire a regular, not "acting," Affirmative Action Officer who reports directly to the Chief Justice for Administration and Management (CJAM)..
- The Trial Court also should provide training for all hiring authorities to make them familiar with the affirmative action plan and hiring policy.
- The CJAM and the Affirmative Action Office should educate all employees on the specific components of the affirmative action plan as well as on the role and responsibilities of the Affirmative Action Office. Employees should be informed of progress towards meeting the objectives of the affirmative action plan.
- The Annual Report of the Trial Court should include a report of the affirmative action efforts undertaken during the reporting period.
- All employees of the Trial Court should receive diversity training.

- The Trial Court should review all collective bargaining agreements to assure that all hiring, promotion and other personnel provisions in the agreements support the Trial Court's commitment to affirmative action. If they do not, the Trial Court should propose and negotiate such language.

- The CJAM should insure that minorities are adequately represented at all levels and in all job categories by working directly with the Affirmative Action Office to: 1) monitor the utilization of minorities at the individual court level, and 2) review career ladders. The Trial Court should inform all employees about the various mechanisms available to address discriminatory conduct. All employees must also be informed of the consequences of discriminatory conduct.

- The Trial Court should review and update all job descriptions to require linguistic skills and multi-cultural knowledge where such capabilities would serve the public better.

- The Trial Court should review employee assignments to assure that minority employees are assigned, without geographic restriction, to all positions, particularly those where there is public contact.

- The Trial Court should share data gathered on the utilization of minorities with the Executive Branch to assure the appointment of adequate numbers of minority court clerks.

Education and Training

Educational programs offer a forum for participants to examine and challenge their own pre-training perceptions and stereotypes of other cultures. This opportunity for learning and self-examination can result in more knowledgeable and sensitive employees. The benefits of training programs are long-term. They have the potential to make the court environment more receptive to, and more tolerant of, racial and cultural differences.

The Massachusetts court system does not have a comprehensive plan for training court employees on cultural and racial diversity and language barriers. The Commission found that cultural, racial and language differences among court employees often result in misunderstanding and failure of communication. Cultural awareness education has proved effective, in the courts and elsewhere, in preventing discriminatory behavior.

Recommendations

- The Massachusetts Court system should develop a comprehensive and mandatory cultural sensitivity training plan for all court personnel, including those working in Clerks' offices and the Probation Department.

- The Trial Court should require, as part of general staff orientation and development, that employees participate in diversity training that includes the effect of racial and ethnic bias on relationships with co-workers and with the public. This mandatory training should include follow-up sessions.
- The presiding judge of each court should have authority and funding to require training for all staff members.
- Everyone who works within the courts, including district attorneys, victim witness advocates, attorneys, police and social service workers should be encouraged to seek cultural diversity education and training.
- Bar Associations, Legal Services programs, the Committee for Public Counsel Services, Bar Advocates, District Attorney's Offices and other agencies should be urged to sponsor education and training programs for their staff and constituents.
- The Supreme Judicial Court and the Trial Court should encourage law schools to add diversity training to their curricula.
- The Trial Courts and bar associations should offer public education programs about court procedures.
- Educational reference guides, such as a cultural desk book, should be developed to provide judges, attorneys, and court personnel with information that will improve the court system's ability to deliver bias-free justice. This material should describe the needs of non-English speaking persons and the effective use of interpreters. Other important information that should be included are facts about countries and/or cultures, such as family structure and customs, which may have relevance to the matter pending in the court and/or may have an impact upon the ability of a litigant to receive bias-free justice.

ENDNOTES

1. At the federal level, the Federal Court Interpreters Act of 1978 gives "non-English speaking and hearing/speech-impaired defendants and witnesses an equal chance to understand and participate" in criminal and civil proceedings initiated by the federal government. 21 U.S.C.§ 1827 (1988).

2. No significant comparisons could be made, for example, among amount of drugs confiscated from convicted traffickers, prior records, additional weapons and firearms offenses and the effect of plea bargains.

3. J.M. Shuster (with Lijian Chen), Eyes on the Courts, (1994), Part I-33, 34. The eleven key questions used to create an index of key bias indicators were:

- Attorneys berate/make jokes, or make demeaning remarks about minorities in the courthouse;
- Judges berate/make jokes, or make demeaning remarks about minorities in the courthouse;
- Court employees berate/make jokes, or make demeaning remarks about minorities in the courthouse;
- For similar offenses, minority defendants receive prison sentences while white defendants do not;
- White defendants receive the first-time offender waiver more often than minority defendants for similar crimes;
- Attorneys recommend settlement of civil injury cases for smaller amounts for minority clients than for white clients;
- White litigants receive higher awards for disfiguring injuries than minority litigants;
- Jurors give less credibility to minority victims than to white victims;
- Courts are more willing to enforce alimony awards for white parties than for minority parties;
- When children are removed from the home pursuant to orders in Care and Protection cases, white parents are told where the children are residing, whereas minority partners are not told;
- The court enforces a child support award for a white child more vigorously than it does for a minority child.

4. *Ibid*, I-35. The survey analysis estimated that 2,778 (16.8%) of all attorneys in Massachusetts would have answered that they had observed or experienced one of the eleven key forms of bias "usually" or "always" if all of the attorneys in Massachusetts had been sent and had responded to the questionnaire.

5. *Ibid.*, I-35. The analysis is based on the 60.1% of unweighted survey respondents who remained after responses from attorney who did not indicate a racial/ethnic category, who had not spent any time in the Massachusetts state courts, or who provided no usable answers to any of the eleven key bias questions were deleted from the analysis. This had the effect of deleting 11,426 attorneys from the totals estimated attorney population of 27,992.

6. Certain courts also use volunteer advocates-CASAs or Court Appointed Special Advocates - who act as guardians *ad litem* for children, Everything the Commission recommends in this report with respect to fairness of process and quality of service ought to apply equally to the appointment of volunteers.

APPENDIX B

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APPENDIX C

Case One[65]

The evidence showed that at approximately 8:15 p.m. on July 27, 1977, John Errol Ferguson gained admittance to the home of Livingston Stocker by posing as an employee of the power company. Margaret Wooden was in the home at the time. After checking outlets in several rooms, Ferguson drew a gun and bound Wooden's hands behind her back and blindfolded her. Then Ferguson admitted Beauford White and Marvin Francois into the house. The three men, armed with weapons, searched the house for valuables. They took firearms and some of Margaret Wooden's jewelry. Then, the three men covered their faces with masks.

The three men ransacked the house. About an hour later, the owner of the house, Livingston Stocker, arrived home with five friends -- Henry Clayton, Johnny Hall, Randolph Holmes, Charles Stinson, and Gilbert Williams. These five were forced to lie facedown on the floor while their hands were tied behind their backs. Later, Michael Miller, Stocker's nephew, arrived at the house and he too was tied up. At gunpoint, the victims were asked for money and drugs, and were searched one by one.

Francois' mask then slipped off and he declared that all the victims must be killed. Ferguson took Margaret Wooden and Michael Miller into a bedroom and shot them both in the head with a pistol. Francois too the other six victims into another bedroom, made them lie down on the floor, and shot them each in the head with a shotgun.

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[65]This fact summary is taken from *White v. State*, 403 So.2d 331 (Fla. 1981) and *Francois v. State*, 407 So.2d 885 (Fla. 1981).

After the three attackers departed, Margaret Wooden ran to a neighbor's house to call for help. When the police arrived they found Johnny Hall crawling toward the back door of the house. Both Wooden and Hall survived and testified at trial. The other six victims died. At trial, Johnny Hall identified Francois as the man who shot him and five others with a shotgun.

Adolpus Archie testified that he took Francois, Ferguson, and White to Stocker's home in his car and waited for them down the street. He testified further that it was unnecessary for him to pick up the other three and drive them away since they departed the scene in Stocker's car. Archie met the other three later and assisted in disposing of the evidence. He testified that Francois told him that the real purpose of the venture was not robbery but murder. According to Archie's testimony, Francois also said that he and Ferguson had done the shooting. According to Archie, this was a planned contract murder of Stocker for drug-related reasons. Archie pled guilty to second-degree murder and received a sentence of twenty years imprisonment.

Case Two[66]

After visiting with relatives, Erna L. Carlson returned to her home at approximately 9:00 p.m. on May 21, 1977. At 8:30 a.m. the following morning, Mrs. Carlson's body was discovered in her bedroom with her robe and part of a bedspread tied tightly around her neck. She had been raped and had suffered two fractured ribs. The screens on the door to the porch and on the door leading from the porch to the house had been cut. A piece of stocking containing a strand of negroid hair was found in the garage. The victim's pajama bottoms contained blood and seminal fluid stains. No fingerprints were found in the house.

On May 22, 1977, police located Mrs. Carlson's car at a lakeside park approximately one mile from her home. The door to the driver's side was locked, the passenger door was not. The keys to the car were in the glove compartment. Fingerprints were found on the inside of the driver's side window.

Prompted by allegations that Peek had been going door to door seeking employment in the area, an officer of the police department interviewed Peek several days after the murder. Peek lived in a supervised halfway house at the time of the crime. He told the police officer that he had returned to the halfway house before 11:00 o.m. the night of the murder and had not been in the vicinity of Mrs. Carlson's home or of the lakeside park.

Peek voluntarily allowed his fingerprints and a hair sample to be taken. The hair samples were sent to the crime lab for

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[66]This fact summary is based on *Peek v. State*, 395 So.2d 492 (Fla. 1980).

comparison but were lost subsequent to the testing. At trial, however, an employee testified that the hair samples obtained from Peek were consistent in microscopic appearance to the hair found in the stocking at the scene of the crime. Although it is never possible to say that two hairs are identical, the hairs of only approximately two out of every 10,000 persons exhibit consistent microscopic characteristics.

The blood and seminal fluid stains from Mrs. Carlson' pajamas were from an individual with type secretor blood; Peek was a type O secretor. The evidence further revealed that the fingerprints found inside Mrs. Carlson's car matched those of Peek.

APPENDIX D

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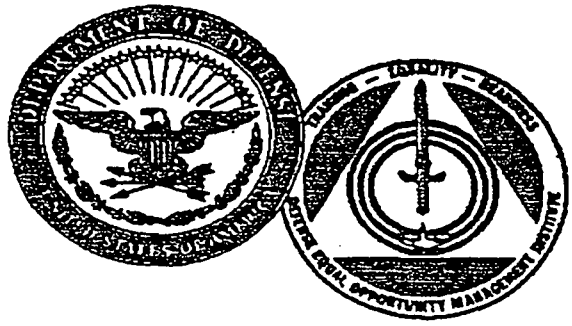
APPENDIX E



INFORMATION/TALKING PAPERS

ON

VARIOUS VERSIONS OF THE MEOCS

TAB A: Information Paper on Standard MEOCS (version 2.3)

TAB B: Talking Paper on MEOCS-EEO

TAB C: Talking Paper on MEOCS-LITE

TAB D: MEOCS Request Form--same form used for all versions (specify version in "MISC INFO:" Block.

Defense Equal Opportunity Management Institute
Directorate of Research
740 O'Malley Road
Patrick AFB FL 32925

DSN: 854-2675 or
Commercial : 407-494-2675

INFORMATION PAPER
ON
THE MILITARY EQUAL OPPORTUNITY CLIMATE SURVEY (MEOCS)

At the direction of the Defense Equal Opportunity Council (DEOC), the Defense Equal Opportunity Management Institute (DEOMI) developed MEOCS as a tool for military commanders to assess the equal opportunity (EO) climate of their organizations. This survey measures the perceptual climate (i.e., people's judgements and beliefs) rather than numbers of incidents of complaints.

The survey measures the perceptions of unit members on nine EO factors. Those factors are Sexual Harassment and Discrimination, Differential Command Behaviors toward Minorities, Positive EO Behaviors, overt Racist/Sexist Behaviors, two factors related to "Reverse Discrimination" (i.e., preferential treatment of minorities and women), Discrimination Against Minorities and Women, Racial/Gender Separatism, and Overall EO Climate.

In addition to these EO factors, the survey measures job satisfaction, opinions on work group productivity or effectiveness, identification with (or loyalty to) the Service, and personal experiences of the respondent with instances of discrimination.

Once the responses are collected, they are returned to DEOMI for analysis using statistical programs and validated assessment techniques. Those who respond are guaranteed confidentiality, so no one in the unit knows who said what on the survey. Additionally, the assessment report is sent only to the commander who requested the survey. The assessment package is comprised of the statistical analysis of the results as well as a narrative interpretation of the responses.

In conjunction with the assessment report, DEOMI may provide (upon request) people qualified to assist the commander and his or her designated project officer(s) in understanding their MEOCS results and determining appropriate courses of action based upon the survey results. This assistance is tailored to the needs of the unit and designed to close the loop where the commander assesses his or her organization, determines courses of action to remedy identified shortcomings and build on strengths, and then implements those actions. The final step in this process is for follow-on evaluation to ensure plans made and actions taken were on target. A re-evaluation is recommended approximately 6 months from the briefing of the initial MEOCS results. We recommend this evaluation include a second administration of the MEOCS; but again, this determination is made by the commander.

TALKING PAPER

ON

MILITARY EQUAL EMPLOYMENT OPPORTUNITY CLIMATE SURVEY (MEOCS-EEO)

The MEOCS-EEO is a new version of the Military Equal Opportunity Climate Survey (MEOCS) developed by the Defense Equal Opportunity Management Institute (DEOMI), Patrick AFB, FL. While the normal MEOCS measures 12 equal opportunity (EO) and organizational effectiveness (OE) factors, the MEOCS-EEO includes 16 factors, expanding the normal MEOCS to include factors more relevant to civilian equal employment opportunity (EEO) issues (e.g., discrimination based on age or disability) plus additional OE factors (e.g., work group cohesion, trust in the organization). The MEOCS feedback package contains results (scores) for these additional factors; however, since these are experimental measures and subject to modification, the package contains no information on interpreting these new scores. The following may be helpful in interpreting the new scales.

- Standard MEOCS factors *included* in MEOCS-EEO and fully explained in the feedback package:

  -- Sexual Harassment and Discrimination
  -- Differential Command Behavior toward Minorities
  -- Positive Equal Opportunity Behaviors
  -- Racist/Sexist Behaviors
  -- "Reverse" Discrimination I (at the local unit level)
  -- Commitment (to the organization)
  -- Perceived Work Group Effectiveness
  -- Job Satisfaction
  -- Overall EO Climate

- Standard MEOCS factors *eliminated* from MEOCS-EEO:

  -- Discrimination toward Minorities and Women (at the global level)
  -- "Reverse" Discrimination II (at the global level)
  -- (Desire for) Racial Separatism (at the global level)

- *Additional OE factors* included in MEOCS-EEO:

  -- Work Group Cohesion (a measure of how well work groups work well together, pull together on projects, and care for and trust each other)
  -- Leadership Cohesion (similar to Work Group Cohesion, but focused on how members perceive leaders above them working well together)
  -- Trust in the Organization (an indicator of how well people perceive the organization as "taking care" of its people)

-- Total Quality Programs (indicator of total quality ideals such as worker empowerment and orientations toward customer satisfaction and continuous improvement)

- *Additional EEO factors* included in MEOCS-EEO:

-- Age Discrimination (perceptions of whether people are discriminated against because of their age)

-- Religious Discrimination (perceptions of whether people are discriminated against because of their religion)

-- Disability Discrimination (perceptions of whether people are discriminated against because of their disability or handicap)

- All the new factors are reported on 5-point scales and are interpreted just the same as other MEOCS factors (i.e., a higher score means a better condition)

- The new factors are included in the calculation of Disparity Indexes (explained in the feedback package)

- Preliminary estimates of the reliabilities of the new scales indicate they are satisfactory (Alpha coefficients of .7 or more)

- **Further refinement of MEOCS-EEO is anticipated**

- For questions or comments, please call Dr. Dansby, DSN 854-2746, commercial (407) 494-2746

TALKING PAPER

ON

MILITARY EQUAL OPPORTUNITY CLIMATE SURVEY --
LESS INTENSIVE, TRUNCATED EDITION (MEOCS-LITE)

The MEOCS-LITE is a new version of the Military Equal Opportunity Climate Survey (MEOCS) developed by the Defense Equal Opportunity Management Institute (DEOMI), Patrick AFB, FL. While the normal MEOCS measures 12 equal opportunity (EO) and organizational effectiveness (OE) factors, the MEOCS-LITE includes 14 factors. It has six of the original EO factors, all three of the original OE factors, and five new EO factors. MEOCS-LITE does this with 30 fewer items by eliminating some of the longer MEOCS factors and using shorter versions of most factor scales. The MEOCS-LITE feedback package contains results (scores) for all factors; however, since there are several experimental measures (which are subject to modification), the package contains no information on interpreting these new scores. The following may be helpful in interpreting the new scales.

- Standard MEOCS factors *included* in MEOCS-LITE and fully explained in the feedback package:

-- Sexual Harassment and Discrimination
-- Differential Command Behavior toward Minorities
-- Positive Equal Opportunity Behaviors
-- Racist/Sexist Behaviors
-- "Reverse" Discrimination I (at the local unit level)
-- Commitment (to the organization)
-- Perceived Work Group Effectiveness
-- Job Satisfaction
-- Overall EO Climate

- Standard MEOCS factors *eliminated* from MEOCS-LITE:

-- Discrimination toward Minorities and Women (at the global level)
-- "Reverse" Discrimination II (at the global level)
-- (Desire for) Racial Separatism (at the global level)

- *Additional EO factors* included in MEOCS-LITE:

-- EO Issues (measures perceptions of how much a concern there is for relationships between various groups, such as men-women, minority-majority, etc.)
-- Success of EO Programs (measures perceptions of how successful the unit has been in dealing with EO issues)
-- Helpfulness of EO Programs (measures perceptions of whether EO programs have been more helpful or harmful in striving toward EO in the organization)

-- EO Link to Leadership and Readiness (measures perceptions of the need for EO and leadership support for EO in order to get the job done)

-- Relative EO Climate (measures perceptions of the EO climate in the current unit compared to other units the respondent is familiar with)

- All the new factors are reported on 5-point scales and are interpreted just the same as other MEOCS factors (i.e., a higher score means a better condition)

- The new factors are included in the calculation of Disparity Indexes (explained in the feedback package)

- Preliminary estimates of the reliabilities of the new scales indicate they are satisfactory (Alpha coefficients of .68 or more)

- Further refinement of MEOCS-LITE is anticipated

- For questions or comments, please call Dr. Dansby, DSN 854-2746, commercial (407) 494-2746

MEOCS REQUEST FORM

Include the following information when requesting the Military Equal Opportunity Climate Survey (MEOCS):

NOTES:
- WE WILL PROVIDE ENOUGH ANSWER SHEETS TO COMPLETE THE MEOCS, HOWEVER, WE ONLY PROVIDE ONE COPY OF THE SURVEY. IT IS THE ORGANIZATION'S RESPONSIBILITY TO REPRODUCE THE SURVEYS REQUIRED.
- FOR ORGANIZATIONS WITH MORE THAN 100 PERSONNEL: WE WILL NOT PROCESS YOUR MEOCS UNLESS THERE IS A RESPONSE RATE OF AT LEAST 50% OF THE ORGANIZATION'S TOTAL STRENGTH.
- FOR ORGANIZATIONS WITH 50-100 PERSONNEL: WE MUST RECEIVE AT LEAST 50 RESPONSES IN ORDER TO PROCESS YOUR MEOCS.
- FOR ORGANIZATIONS WITH LESS THAN 50 PERSONNEL: WE CANNOT DO A MEOCS FOR YOUR ORGANIZATION.

1. Grade of requesting commander/manager (O-3, O-6, GS-11, SES-4.):

2. Organization's strength (PRESENT ASSIGNED STRENGTH):

3. Organization's present location –State, Country, Area – (EXAMPLES – KENTUCKY, JAPAN, GERMANY, PACIFIC):

4a. Branch of service (CIRCLE ONE): USAF USA USCG USMC USN DoD/Joint Service Federal Civilian Other _____

4b. Service Component (CIRCLE ONE): Active Duty Reserve National Guard Other _____

5. You will administer MEOCS to (CIRCLE ONE): Military Only Civilian Only Both

6. Organization's major command – MACOM, MAJCOM (EXAMPLES – TRADOC, CG DISTRICT 2, PACFLEET,AMC):

7. Organization's Unit Identification Code (UIC) (PAS code for USAF):

8. Organization's mission (CIRCLE ONE): Combat Combat Support Other Support

9. Commander's title, Organization's name and Official address:
(EXAMPLE – See Our Mailing Address Below – Item #14)

10. Survey administrator: Rank and Name: Phone Number:

11. Has the organization taken MEOCS before: No Yes Date or Dates:

12. Organization's Demographics: (Present Assigned Strength)

	MALE			FEMALE		
	OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN
MAJORITY						
MINORITY						
TOTALS						

"MINORITY" Includes the following racial/ethnic groups: Black/African American, Hispanic, Asian-American/Pacific Islander, & Native-American/Alaskan-Native.
"MAJORITY" Includes those Not in the groups listed above.

13. Commander's/Manager's signature:
NOTE: The requesting commander must sign the request.
Sign:

14. Mail the request to: Commandant
DEOMI/DR (MEOCS)
740 O'Malley Road
Patrick AFB, FL 32925-3399

Rank & Name:
(Print or Type)

Our phone number is: DSN 854-2675 or Commercial (407) 494-2675.

Our FAX number is: DSN 854-4116 or Commercial (407) 494-4116.

Revised 19 April 1995

FOR DEOMI USE ONLY

ADMIN NUMBER	REC'D REQUEST DATE	SENT SURVEYS DATE	REC'D COMPLETED FORMS DATE	SENT FINAL RPT DATE	NUMBER OF FORMS REQUESTED	NUMBER OF FORMS SENT
SITE NUMBER :	# FORMS RECEIVED	MISC INFO:				

 TAB D

MILITARY EQUAL OPPORTUNITY CLIMATE SURVEY: LESS INTENSIVE, TRUNCATED EDITION (MEOCS-LITE)

VERSION 1.0

PRIVACY ACT STATEMENT

In accordance with DoD Directive 5400.11, the following information about this survey is provided:

a. Authority: 10 USC, 131.

b. Principal Purpose: The survey is being conducted to gain insight into equal opportunity and human relations from a unit perspective.

c. Routine Uses: Information provided by respondents will be treated confidentially. The averaged data will be provided to the commander or unit head who requested the survey to provide a perspective on unit members' views of equal opportunity. Responses will be added to a database of results from all personnel surveyed. Averaged results from the database will be used to inform senior leaders and others about equal opportunity issues.

d. Participation: Response to this survey is voluntary. Failure to participate will lessen your commander's or unit head's ability to understand and correct equal opportunity/human relations problems in your unit, reduce reliability of the feedback provided to your commander or unit head, and may hamper efforts by DoD to track trends in equal opportunity and organizational issues. Your response is needed to help ensure the validity of the survey. We appreciate your participation.

This survey was constructed by the Defense Equal Opportunity Management Institute, 740 O'Malley Road, Patrick Air Force Base, FL. 32925-3399. For further information, contact the Directorate of Research, Defense Equal Opportunity Management Institute

MILITARY EQUAL OPPORTUNITY CLIMATE SURVEY - LITE

General Instructions
(Please read before beginning the survey)

This survey is administered to help your commander assess the equal opportunity (EO) climate in your unit. **Your unit includes all the people falling under the commander (or organizational head) who signed the cover letter to this survey.** The survey measures your views of equal opportunity in your unit. Please answer honestly, the way you feel, and don't try to give us the "right" or "expected" responses. We will use the information to provide confidential feedback to your commander/unit head regarding the summarized views of those in your unit. No attempt will be made to identify individual respondents and their responses.

You will be asked for your opinion on a number of issues. Your individual responses will be held confidential, though unit averages will be reported to the commander who requested the survey. The individual items of the survey are used to construct scales measuring various aspects of EO and human relations. The scales were developed using a standard measurement technique called factor analysis, and the scales are much more reliable than individual items as a measurement device. **To maintain the integrity of the scales, it is important that you respond to as many items as possible.** If you absolutely cannot respond to an item, just leave it blank (or mark not applicable where this option is provided).

For the purposes of this survey, we follow standard DoD definitions (based on Census categories) . . .

"**Minority**" includes males or females of the following racial/ethnic groups:

- BLACK/AFRICAN-AMERICAN (NOT OF HISPANIC ORIGIN)
- HISPANIC
- ASIAN-AMERICAN OR PACIFIC ISLANDERS
- NATIVE AMERICAN/ALASKAN NATIVE
- OTHER MINORITY (includes racial/ethnic groups not listed above, yet not considered part of the white or Caucasian majority in the United States)

"**Majority**" includes white (or Caucasian) males and females not in the groups listed above.

"**Unit**" or "**organization**" refers to the command, directorate, division, branch, or organizational unit that requested the survey. This will usually be an organization of 100 people or more.

"**Work group**" refers to all the people who report directly to the same supervisor as you do.

Please . . .

- WRITE YOUR ADMIN NUMBER IN THE SPACE PROVIDED AT THE TOP OF THE RESPONSE SHEET.

- USE A #2 PENCIL TO ANSWER EACH ITEM ON THE RESPONSE SHEET.

- TRY TO BE AS ACCURATE AS YOU CAN, BUT FOR MOST OF THE ITEMS WE ARE ASKING FOR YOUR OPINIONS AND THERE ARE NO RIGHT OR WRONG ANSWERS.

- AFTER COMPLETING THE QUESTIONNAIRE, SEAL IT AND YOUR ANSWER SHEET IN THE ENVELOPE PROVIDED. **PLEASE DO NOT FOLD THE RESPONSE SHEET.** RETURN THE SEALED ENVELOPE TO YOUR SURVEY ADMINISTRATOR. IF YOU ARE COMPLETING THE SURVEY IN A GROUP SETTING, PLEASE RETURN THE SURVEY MATERIALS AS INSTRUCTED BY YOUR SURVEY ADMINISTRATOR.

BEFORE BEGINNING THE SURVEY, PLEASE:

1. Leave the areas marked "LOCATION CODE" and "SERVICE CODE" blank.

2, In the area marked "ADMIN NO.' at the top of your answer sheet, write in the following: ------>[ ]

PART I
Demographics

In this section, please tell us some things about yourself. This information will be used for statistical analysis. *Your responses will be held confidential.*

1. I have personally experienced an incident of discrimination (racial, sexual, or sexual harassment) directed at me from *military* sources (including civilians employed by the military).

1 = YES 2 = NO

2. I filed a complaint on the incident.

1 = YES 2 = NO 6 = N/A

3. I was satisfied with the disposition of the complaint that I filed.

1 = YES 2 = NO 6 = N/A

4. I have personally experienced an incident of discrimination (racial, sexual, or sexual harassment) from *non-military* sources.

1 = YES 2 = NO

5. I filed a complaint on the incident.

1 = YES 2 = NO 6 = N/A

6. I was satisfied with the disposition of the complaint that I filed.

1 = YES 2 = NO 6 = N/A

7. The highest level of education I have completed is:

1 = less than graduating from high school.
2 = high school graduate or G.E.D.
3 = some college.
4 = college degree.
5 = advanced college work or degree.

8. Before I joined the military (or started working for the government), the approximate percentage of my close personal friends who were of my same racial/ethnic group was

1 = 25 percent or less.
2 = more than 25 but less than 50 percent.
3 = more than 50 but less than 75 percent.
4 = more than 75 but less than 100 percent.
5 = 100 percent.

9. Currently, I have at least one close personal friend (a person with whom I would feel comfortable discussing very personal problems) who is of a different racial/ethnic group than myself.

1 = YES 2 = NO

10. I am

1 = female 2 = male.

11. My racial/ethnic group is

1 = American Indian or Alaskan Native.
2 = Asian or Pacific Islander.
3 = African-American (not of Hispanic origin).
4 = Hispanic.
5 = White (not of Hispanic origin).
6 = Other.

12. I am a(n):

1 = officer
2 = warrant officer
3 = enlisted member
4 = Federal civilian employee (DoD affiliated)
5 = Federal civilian employee (not DoD affiliated)
6 = other (e.g., private civilian, State employee)

13. If enlisted, what pay grade?

1 = E1 - E3
2 = E4 - E5
3 = E6
4 = E7
5 = E8 - E9
6 = Not enlisted

Please Continue

14. If warrant officer, what pay grade?

1 = W1
2 = W2
3 = W3
4 = W4
5 = W5
6 = not a warrant officer

15. If commissioned officer, what pay grade?

1 = O1-O2
2 = O3
3 = O4
4 = O5
5 = O6 or above
6 = not a military officer

16. If GS or GM civilian employee, what pay grade?

1 = GS 1-4
2 = GS 5-7
3 = GS 8-10
4 = GS/GM 11-13
5 = GS/GM 14-15
6 = not a GS or GM civilian

17. If Wage Grade civilian employee, what pay grade?

1 = WG 1-5
2 = WG 6-9
3 = WG 10-13
4 = WG 14-16
5 = WG 17-18
6 = not a Wage Grade civilian

18. If SES civilian employee, what pay grade?

1 = SES 1-2
2 = SES 3-4
3 = SES 5-6
4 = not an SES civilian

19. My age is

1 = under 20 years.
2 = 20 - 25.
3 = 26 - 30.
4 = 31 - 40.
5 = 41 - 50.
6 = 51 or over.

20. My Branch of Service (military) or Service I work for (civilian) is:

1 = Air Force.
2 = Army.
3 = Navy.
4 = Marine Corps.
5 = Coast Guard.
6 = Other DoD or Agency.

21. My organization is best described as:

1 = Active duty military (including Coast Guard)
2 = Reserves (including Coast Guard)
3 = National Guard
4 = DoD Agency
5 = Non-DoD Federal Agency
6 = Other

22. If you are a member of the National Guard or Reserves, how would you classify your duty?

1 = Weekends and annual training only
2 = Individual Mobilization Augmentee
3 = Technician
4 = Active Guard/Reserve
5 = Other Guard or Reserve employee
6 = I am not a Guard or Reserve member

PART II
General Equal Opportunity (EO) Perceptions

Use the scale below to indicate your degree of agreement with the following statements.

1 = *totally disagree* with the statement
2 = *moderately disagree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately agree* with the statement
5 = *totally agree* with the statement

23. EO plays a critical part in readiness.

24. The EO program has served its purpose and should be eliminated.

25. The EO climate in my unit is much better than it is in other similar units.

26. I fully support the EO program.

27. There is a strong link between EO in an organization and getting the job done.

28. I have received sufficient EO training in my career.

29. Most leaders in my unit place too much emphasis on EO issues.

30. EO training in my unit is generally helpful in improving intergroup relations.

31. The most important element in a good EO climate is the commander's or agency head's leadership.

32. EO issues should be handled through the chain-of-command.

33. There is a need for a "safety valve" outside the chain-of-command to resolve some EO complaints.

34. Affirmative action is an important element of an EO program.

35. EO education or training is an important element in an EO program.

36. It is extremely important for the organizational commander or head to model appropriate EO behaviors.

37. Everyone should be involved in promoting EO within my unit.

38. EO issues are generally handled fairly in my unit.

39. The discipline system in my unit is fair to all groups.

40. Rewards (e.g., promotions, awards, recognition) in my unit are distributed fairly to all groups.

41. Job assignments in my unit are fair to all groups.

PART III
EO Issues

For each of the following, indicate the degree to which you believe it is a problem within your unit. Use the scale below.

1 = *a very serious problem*
2 = *a serious problem*
3 = *a moderate problem*
4 = *a minor problem*
5 = *no problem at all*

---

6 = *not applicable to my unit (use only if impossible to answer because of unit demographics)*

The relationship between . . .
(please respond to as many as possible; if your unit lacks either of the compared groups, mark 6)

42. Minority and majority group members

43. Minority groups and other minority groups (e.g., black and Hispanic or Asian-Pacific and Native American)

44. Women and men

45. Minority women and minority men

46. Minority women and majority men

47. Majority women and minority men

48. Majority women and majority men

1 = *a very serious problem*
2 = *a serious problem*
3 = *a moderate problem*
4 = *a minor problem*
5 = *no problem at all*

---

6 = *not applicable to my unit (use only if impossible to answer because of unit demographics)*

Concerns with . . .

49. Racism or race discrimination

50. Sexism or gender discrimination

51. Sexual harassment

52. Preferential treatment for women

53. Preferential treatment for minority members

54. Unit members participating in or supporting extremist groups.

PART IV
Unit EO Climate

For Part IV of the survey, think about the EO climate in your unit during the last 30 days. Rate each item based on your perception of conditions in the unit.

55. Most people would rate the equal opportunity climate in my unit as

1 = very poor
2 = poor
3 = about average
4 = good
5 = very good

56. I personally would rate the equal opportunity climate in my unit as

1 = very poor
2 = poor
3 = about average
4 = good
5 = very good

For the next series of items, use the scale below to indicate your opinion of the *likelihood* that the listed actions occurred in your unit *in the last 30 days. We are not asking whether you have actually observed the actions*; rather, *we would like your opinion as to how likely such actions are* to have taken place. To make these judgments, we will ask you to use the following scale:

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high* chance that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

---

6 = Not applicable to my unit (use only if impossible to answer because of unit demographics)

EXAMPLE: IF, IN YOUR OPINION, THERE IS A VERY HIGH CHANCE THAT "A MALE GAVE A 'WOLF WHISTLE' TO A FEMALE," YOU WOULD ASSIGN A "1" TO THAT ACTION.

57. A male supervisor touched a female peer in friendly manner, but never touched male peers.

58. When a woman complained of sexual harassment to her superior, he told her, "You're being too sensitive."

59. A supervisor referred to women subordinates by their first names in public while using titles for the male subordinates.

60. The person in charge assigned an attractive female to escort visiting male officials because, "We need someone nice looking to show them around."

61. A majority supervisor frequently reprimanded a minority employee but rarely reprimanded a majority employee who had the same level of performance.

62. A majority supervisor did not select a qualified minority subordinate for promotion but did select qualified majority members.

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high* chance that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

---

6 = Not applicable to my unit (use only if impossible to answer because of unit demographics)

63. A minority person was assigned less desirable office space than a majority person.

64. The person in charge changed the duty assignments when it was discovered that two persons of the same minority were assigned to the same sensitive area on the same shift.

65. While giving a talk, the person in charge of the organization took more time to answer questions from majority members than from minority members.

66. Majority and minority supervisors were seen having lunch together.

67. Majority and minority personnel were seen having lunch together.

68. A new minority person joined the organization and quickly developed close majority friends within the organization.

69. Majority and minority members were seen socializing together.

70. Majority personnel joined minority friends at the same table in the cafeteria or designated eating area.

71. A majority person told several jokes about minorities.

72. Graffiti written on the organization's rest room or latrine walls "put down" minorities or women.

73. Offensive racial/ethnic names were frequently heard.

74. Racial/ethnic jokes were frequently heard.

75. The person in charge did not appoint a qualified majority person to a key position, but instead appointed a less qualified minority person.

76. A minority man was selected for a prestigious assignment over a majority man who was equally, if not slightly better, qualified.

77. A minority woman was selected to receive an award for an outstanding act, even though she was not perceived by her peers as being as qualified as her nearest competitor, a majority man.

78. A majority and a minority person each turned in similar pieces of equipment with similar problems. The minority person was given a new issue; the majority person's equipment was sent to maintenance for repairs.

PART V
Work Issues

Please respond to the following items regarding the *effectiveness of your work group* (all persons who report to the same supervisor that you do) using the scale below:

1 = *totally disagree* with the statement
2 = *moderately disagree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately agree* with the statement
5 = *totally agree* with the statement

79. The amount of output of my work group is very high.

80. The quality of output of my work group is very high.

81. When high priority work arises, such as short suspenses, crash programs, and schedule changes, the people in my work group do an outstanding job in handling these situations.

82. My work group always gets maximum output from available resources (e.g., personnel and materials).

83. My work group's performance in comparison to similar work groups is very high.

Please Continue

1 = *totally disagree* with the statement
2 = *moderately disagree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately agree* with the statement
5 = *totally agree* with the statement

84. I would accept almost any type of assignment in order to stay in this unit.

85. I find that my values and the unit's values are very similar.

86. I am proud to tell others that I am part of this unit.

87. I feel very little loyalty to this unit.

88. This unit really inspires me to perform my job in the very best manner possible.

89. I am extremely glad to be part of this unit compared to other, similar units that I could be in.

The next few questions ask about *your satisfaction with some specific job-related issues*. Indicate your degree of satisfaction or dissatisfaction by choosing the most appropriate phrase:

1 = *very* satisfied
2 = *moderately* satisfied
3 = *neither* dissatisfied nor satisfied
4 = *somewhat* dissatisfied
5 = *very* dissatisfied

Level of satisfaction with:

90. The chance to help people and improve their welfare through the performance of my job.

91. My amount of effort compared to the effort of my co-workers.

92. The recognition and pride my family has in the work I do.

93. The chance to acquire valuable skills in my job that prepare me for future opportunities.

94. My job as a whole.

Thank You!

MILITARY EQUAL EMPLOYMENT OPPORTUNITY CLIMATE SURVEY (MEOCS-EEO)

TEST VERSION 3.1

PRIVACY ACT STATEMENT

In accordance with DoD Directive 5400.11, the following information about this survey is provided:

a. Authority: 10 USC, 131.

b. Principal Purpose: The survey is being conducted to assess your organization from an equal opportunity and motivational perspective.

c. Routine Uses: Information provided by respondents will be treated confidentially. The averaged data will be used for identifying strengths and weaknesses in the unit, research, and development purposes. Averaged results will be provided to the commander requesting the survey and will be accumulated to a database of results from all organizations surveyed in your Service.

d. Participation: Response to this survey is voluntary. Failure to participate will lessen the ability of your commander to identify concerns and will hamper efforts by DoD to track trends in equal opportunity and organizational issues. Your response is needed to ensure the validity of the survey. We appreciate your participation.

This survey was constructed by the Center for Applied Research and Evaluation, University of Mississippi under Contract F08606-89-C-007 from Defense Equal Opportunity Management Institute, Patrick Air Force Base, FL. 32925-6685. For further information, see Landis, D., Dansby, M., & Faley, R. (1993). The Military Equal Opportunity Climate Survey: An example of surveying in organizations. In P. Rosenfeld, J. Edwards, & M. Thomas (Eds.), Improving organizational surveys: New directions, methods, and applications (pp210-239). Newbury Park: Sage.

MILITARY EQUAL EMPLOYMENT OPPORTUNITY CLIMATE SURVEY (MEOCS)

General Instructions
(Please read before beginning the survey)

This survey is authorized by your command to measure the equal opportunity climate in your organization. We need to gauge the *potential* frequency of certain kinds of actions. We have gathered the list of actions from DoD people like yourselves. In part I of the survey (items 1 through 49), we ask that you estimate the *chances* that the action occurred during your last 30 duty days in your assigned unit or organization. If you are a member of a Reserve or National Guard unit, "your last 30 duty days" refers to the last 30 days you spent *at your unit* (not necessarily the past *consecutive* 30 days).

For Part I (items 1 through 49) you will use the following scale to make your judgments:

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high* chance that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

EXAMPLE: IF IN YOUR OPINION THERE IS A VERY HIGH CHANCE THAT "A MALE GAVE A 'WOLF WHISTLE' TO A FEMALE," YOU WOULD ASSIGN A "1" TO THAT ACTION.

Remember: **YOU NEED NOT HAVE PERSONALLY SEEN OR EXPERIENCED THE ACTIONS.** We only want your opinion on the chances - or probability - that the actions *COULD* have happened during your last 30 duty days in your assigned unit or organization.

MORE INSTRUCTIONS ON NEXT PAGE

General Instructions (Continued)

FOR THE PURPOSE OF THIS SURVEY:

"Minority" includes males & females of the following racial/ethnic groups:

- BLACK/AFRICAN-AMERICAN (NOT OF HISPANIC ORIGIN)
- HISPANIC
- ASIAN-AMERICAN OR PACIFIC ISLANDERS
- NATIVE AMERICAN/ALASKAN NATIVE.

"Majority" includes males & females NOT IN THE GROUPS ABOVE.

"Organization" refers to the Command, Directorate, Division, Branch, Unit, etc., to which you are assigned.

REMEMBER:

- FOR ITEMS 1 - 49: RATE THE LIKELIHOOD OF EACH ACTION OCCURING IN YOUR ORGANIZATION. YOU NEED NOT HAVE PERSONALLY OBSERVED OR EXPERIENCED IT.
- TRY TO BE AS ACCURATE AS POSSIBLE; HOWEVER, FOR MOST ITEMS THERE IS NO RIGHT OR WRONG ANSWER.
- FOR ITEMS 108 - 132: THE INFORMATION PROVIDED "WILL NOT" BE USED TO IDENTIFY WHO YOU ARE. IT IS USED BY A COMPUTER TO IDENTIFY GROUPS OF PEOPLE (SUCH AS - OFFICER, ENLISTED, ETC). **YOUR ACCURACY IS IMPORTANT IN GETTING AN HONEST ASSESSMENT OF YOUR ORGANIZATION.**
- AFTER COMPLETING THE QUESTIONNAIRE, RETURN IT AND YOUR ANSWER SHEET (IN THE ENVELOPE PROVIDED - IF PROVIDED), TO YOUR SURVEY ADMINISTRATOR.
- USE A #2 PENCIL AND ERASE ALL STRAY MARKS OR ERRORS THROUGHLY.

IMPORTANT:

BEFORE BEGINNING THE SURVEY:

1. LEAVE THE AREA MARKED "LOCATION CODE" AND "SERVICE CODE" BLANK.
2. IN THE AREA MARKED "ADMIN NO." AT THE TOP OF YOUR ANSWER SHEET,

   WRITE IN THE FOLLOWING: -----> 00011

Please Continue

PART I

Use the following scale to estimate the *chances* that the actions listed below COULD have happened:

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high* chance that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

During your last 30 duty days at your duty location:

1. A majority person told several jokes about minorities.

2. The person in charge of the organization did not appoint a qualified majority in a key position, but instead appointed a less qualified minority.

3. Majority and minority supervisors were seen having lunch together.

4. Majority and minority personnel were seen having lunch together.

5. A majority supervisor frequently reprimanded a minority worker but rarely reprimanded a majority worker.

6. Graffiti written on the organization's rest room or latrine walls "put down" minorities and women.

7. A new minority person joined the organization and quickly developed close majority friends from within the organization.

8. A minority man was selected for a prestigious assignment over a majority man who was equally, if not slightly better, qualified.

9. A majority supervisor did not select a qualified minority subordinate for promotion.

10. A minority woman was selected to receive an award for an outstanding act even though she was not perceived by her peers as being as qualified as her nearest competitor, a majority man.

11. A minority member was assigned less desirable office space than a majority member.

12. The person in charge of the organization changed the duty assignments when it was discovered that two people of the same minority were assigned to the same sensitive area on the same shift.

13. While giving a lecture, the person in charge of the organization took more time to answer questions from majority members than from minorities.

14. Majority and minority members were seen socializing together.

15. A male supervisor touched a woman peer in friendly manner, but never touched male peers.

16. A majority and a minority employee turned in similar pieces of equipment with similar problems. The minority person was given a new issue; the majority member's equipment was sent to maintenance for repair.

17. Majority personnel joined minority friends at the same table in the cafeteria or designated eating area.

18. When a woman complained of sexual harassment to her superior, he told her, "You're being too sensitive."

19. Offensive racial/ethnic names were frequently heard.

20. Racial/ethnic jokes were frequently heard.

21. A supervisor referred to women subordinates by their first names in public while using titles for men subordinates.

Please Continue

PART I (Continued)

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high chance* that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

22. The person in charge of the organization assigned an attractive woman to escort visiting men around because, "We need someone nice looking to show them around."

23. Jokes about women were frequently heard.

24. A man made off-color remarks about women.

25. A man complained that "women don't pull their own weight."

26. Cartoons or jokes posted on bulletin boards or other areas "put down" women.

27. A supervisor frequently reprimanded subordinates of one racial or ethnic group but rarely reprimanded subordinates of other racial or ethnic groups.

28. A supervisor did not select a qualified subordinate for promotion because of the subordinate's race or ethnicity.

29. A member was assigned less desirable office space because of his/her racial or ethnic background.

30. While giving a lecture, the person in charge of the organization took more time to answer questions from one racial/ethnic group than from members of another racial/ethnic group.

31. The person in charge of the organization changed the duty assignments when it was discovered that two people of the same racial/ethnic group were assigned to the same sensitive areas on the same shift.

32. A younger person was selected for a prestigious assignment over an older person who was equally, if not slightly better qualified.

33. Sexually oriented materials (magazines, letters, picture, etc.) were commonly visible in the workplace.

34. An older individual did not get the same career opportunities as did a younger individual.

35. A well-qualified person was denied a job because the supervisor did not like the religious beliefs of the person.

36. A disabled worker was not given the same opportunities as non-disabled workers.

37. Sexually oriented jokes and remarks were commonly heard in the workplace.

38. A demeaning comment was made about a certain religious group.

39. Men were usually called upon to speak first in meetings.

40. A qualified woman with small children was denied a promotion while a man with small children was given the promotion.

41. A woman was not treated as seriously as males regarding a career decision.

42. A young supervisor did not recommend promotion for a qualified older worker.

43. Women had to put up with uninvited sexually suggestive looks or gestures.

44. A supervisor favored a worker who had the same religious beliefs as the supervisor.

45. A career opportunity speech to a disabled worker focused on the lack of opportunity elsewhere; to others, it emphasized promotion.

PART I (Continued)

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high chance* that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

46. A majority worker was selected for a prestigious assignment over a minority worker who was equally, if not slightly better, qualified.

47. A minority worker was assigned less desirable job conditions (location, equipment, tasks, etc.) than a majority worker.

48. A reasonable portion of our organization's workforce is made up of minority employees.

49. A supervisor did not appoint a qualified disabled worker to a new position, but instead appointed a less qualified non-disabled worker.

PART II

In this part of the survey, answer the following questions regarding *how you feel about your organization.*

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

50. I find that my values and the organization's values are very similar.

51. I am proud to tell others that I am part of this organization.

52. I feel very little loyalty to this organization.

53. There's not too much to be gained by sticking with this organization until retirement (assuming I could do so if I wanted to).

54. Often, I find it difficult to agree with the policies of this organization on important matters relating to its people.

55. Becoming a part of this organization was definitely not in my best interests.

PART III

Please respond to the following items regarding the *effectiveness of your work group* (all persons who report to the same supervisor that you do) using the scale below:

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

56. The amount of output of my work group is very high.

57. The quality of output of my work group is very high.

58. When high priority work arises, such as short suspenses, crash programs, and schedule changes, the people in my work group do an outstanding job in handling these situations.

59. My work group always gets maximum output from available resources (e.g., personnel and materials).

60. My work group's performance in comparison to similar work groups is very high.

61. My work group is oriented toward satisfying our customers' needs (other units within my organization and other units outside my organization that my unit supports).

62. My work group is empowered to make important decisions in order to improve the quality of our work.

63. My work group strives toward continuous improvement of the quality of our work.

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

64. My work group works well together as a team.

65. Members of my work group pull together to get the job done.

66. Members of my work group really care about each other.

67. Members of my work group trust each other.

68. Top leaders in my organization work well together as team.

69. Top leaders in my organization pull together to get the job done.

70. Top leaders in my organization really care about each other.

71. Top leaders in my organization trust each other.

PART IV

The questions in Part IV are used to determine *how satisfied you are with some specific job-related issues*. Indicate your degree of satisfaction or dissatisfaction by choosing the most appropriate phrase:

1 = *very* satisfied
2 = *moderately* satisfied
3 = *neither* dissatisfied nor satisfied
4 = *somewhat* dissatisfied
5 = *very* dissatisfied

Level of satisfaction with:

72. The chance to help people and improve their welfare through the performance of my job.

73. My amount of effort compared to the effort of my co-workers.

74. The recognition and pride my family has in the work I do.

75. My job security.

76. The chance to acquire valuable skills in my job that prepare me for future opportunities.

77. My job as a whole.

PART V

In this section, use the scale below to indicate how much you agree with the following statements - not necessarily based upon your duty organization.

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

78. I favor laws that permit minorities to rent or purchase housing even when the person offering the property for sale or rent does not wish to rent or sell it to minorities.

79. Generally speaking, I favor full racial integration.

80. Interracial marriage is a bad idea.

81. Over the past few years, the government and news media have shown more respect to minorities than they deserve.

82. It is easy to understand the anger of minority people in America.

83. Discrimination against minorities is no longer a problem in the Department of Defense.

84. The intellectual leadership of a community should be largely in the hands of men.

85. In general, the father should have greater authority than the mother in the bringing up of children.

86. There are many jobs in which men should be given preference over women in being hired or promoted.

87. Women should assume their rightful place in business and all the professions along with men.

88. Women should worry less about their rights and more about becoming good wives and mothers.

PART VI

In this section, using the scale below, indicate how much you agree or disagree with the following statements concerning your organization.

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

In my organization ...

89. ... older persons are discriminated against in hiring or promotions.

90. ... career-enhancing opportunities (such as training or professional development) are more available to younger members because of their age.

91. ... desirable additional duties are given to younger persons simply because of their age.

92. ... there are unfair age restrictions (favoring younger persons) in special assignments.

93. ... a good effort is made to hire disabled workers.

94. ... supervisors make allowances for different religious beliefs and practices among personnel.

95. ... facilities and work stations are designed to accommodate workers with disabilities.

96. ... disabled workers are evaluated fairly (i.e., on the basis of their performance).

97. ... supervisors discriminate against people on the basis of religion.

98. ... disabled workers are expected to "hide" their disabilites.

99. ... holiday policies or practices favor certain religions.

100. ... people of different religions feel comfortable in the work environment.

101. ... people are treated differently because of their national origin (individual's or ancestor's country of origin).

102. ... people from different nationalities work well together.

103. ... supervisors favor particular national groups (e.g., not hiring or promoting individuals from specific countries).

104. The values of this organization reflect the values of its members.

105. This organization is loyal to its members.

106. This organization is proud of its people.

107. This organization is more concerned about the "bottom line" than taking care of its people.

PART VII

In this last section, please tell us some things about yourself. This information will be used for statistical analysis only. *No attempt will be made to identify you.*

108. I have personally experienced an incident of discrimination (racial, sexual, sexual harassment, age, disability, religion, national origin, or color) directed at me from *military* sources (including civilians employed by the military).

1 = YES 2 = NO

109. I filed a complaint on the incident.

1 = YES 2 = NO 6 = N/A

110. I was satisfied with the disposition of the complaint that I filed.

1 = YES 2 = NO 6 = N/A

Please Continue

111. I have personally experienced an incident of discrimination (racial, sexual, sexual harassment, age, disability, religion, national origin, or color) from *non-military* sources.

1 = YES 2 = NO

112. I filed a complaint on the incident.

1 = YES 2 = NO 6 = N/A

113. I was satisfied with the disposition of the complaint that I filed.

1 = YES 2 = NO 6 = N/A

114. The highest level of education I have completed is:

1 = less than graduating from high school.
2 = high school graduate or G.E.D.
3 = some college.
4 = college degree.
5 = advanced college work or degree.

115. Before I joined the military (or started working for the government), the approximate percentage of my close personal friends who were of my same racial/ethnic group was

1 = 25 percent or less.
2 = more than 25 but less than 50 percent.
3 = more than 50 but less than 75 percent.
4 = more than 75 but less than 100 percent.
5 = 100 percent.

116. Currently, I have at least one close personal friend (a person with whom I would feel comfortable discussing very personal problems) who is of a different racial/ethnic group than myself.

1 = YES 2 = NO

117. Most people would rate the equal opportunity climate in this organization

1 = very poor
2 = poor
3 = about average
4 = good
5 = very good

118. I personally would rate the equal opportunity climate in this organization

1 = very poor
2 = poor
3 = about average
4 = good
5 = very good

119. I am

1 = female 2 = male.

120. My racial/ethnic group is

1 = American Indian or Alaskan Native.
2 = Asian or Pacific Islander.
3 = Black/African-American (not of Hispanic origin).
4 = Hispanic.
5 = White (not of Hispanic origin).
6 = Other.

121. I am a(n):

1 = officer
2 = warrant officer
3 = enlisted member
4 = Federal civilian employee (DoD affiliated)
5 = Federal civilian employee (not DoD affiliated)
6 = other (e.g., private civilian, contractor, State employee)

122. If you are a federal civilian employee, in which category are you a member?

1 = GS
2 = GM
3 = WG/WL/WS
4 = SES
5 = other federal civilian
6 = not a federal civilian

123. What is your pay grade (for all enlisted, officer, and civilian grades except SES)?

1 = 1 - 3
2 = 4 - 5
3 = 6 - 10
4 = 11 - 13
5 = 14 - 18
6 = n/a

Please Continue

124. If SES civilian employee, what pay grade?

1 = SES 1-2
2 = SES 3-4
3 = SES 5-6
4 = not an SES civilian

125. My age is

1 = under 20 years.
2 = 20 - 25.
3 = 26 - 30.
4 = 31 - 40.
5 = 41 - 50.
6 = 51 or over.

126. My organization is:

1 = Air Force.
2 = Army.
3 = Navy.
4 = Marine Corps.
5 = Coast Guard.
6 = other DoD.

127. My organization is best described as:

1 = active duty military (including Coast Guard)
2 = Reserves (including Coast Guard)
3 = National Guard
4 = DoD Federal Civilian
5 = Non-DoD Federal Civilian
6 = other

128. Are you classified by your personnel office as a worker with a disability?

1 = Yes
2 = No
3 = I don't know for certain

Of those people with whom you interact routinely on your job:

129. Approximately what percentage are females?

1 = 0 to 10%
2 = 11 to 30%
3 = 31 to 50%
4 = 51 to 70%
5 = 71 to 90%
6 = 91 to 100%

130. Approximately what percentage are minority (i.e., people of color)?

1 = 0 to 10%
2 = 11 to 30%
3 = 31 to 50%
4 = 51 to 70%
5 = 71 to 90%
6 = 91 to 100%

131. Approximately what percentage are physically disabled?

1 = 0 to 10%
2 = 11 to 30%
3 = 31 to 50%
4 = 51 to 70%
5 = 71 to 90%
6 = 91 to 100%

132. Approximately what percentage are older than age 40?

1 = 0 to 10%
2 = 11 to 30%
3 = 31 to 50%
4 = 51 to 70%
5 = 71 to 90%
6 = 91 to 100%

Please provide any written comments on a separate sheet of paper addressed to Defense Equal Opportunity Management Institute, Directorate of Research. THEN, SEAL YOUR ANSWER SHEET, QUESTIONNAIRE, AND ANY WRITTEN COMMENTS IN AN ENVELOPE (if provided) AND RETURN THE ENVELOPE TO YOUR SURVEY ADMINISTRATOR. You may send comments regarding this questionnaire directly to:

Directorate of Research
Defense Equal Opportunity Management Institute
Patrick Air Force Base, FL 32925-3399

End of Questionnaire

MILITARY EQUAL OPPORTUNITY CLIMATE SURVEY (MEOCS)

UNIVERSAL ALL SERVICES VERSION 2.3

PRIVACY ACT STATEMENT

In accordance with DoD Directive 5400.11, the following information about this survey is provided:

a. Authority: 10 USC, 131.

b. Principal Purpose: The survey is being conducted to assess your organization from an equal opportunity and motivational perspective.

c. Routine Uses: Information provided by respondents will be treated confidentially. The averaged data will be used for identifying strengths and weaknesses in the unit, research, and development purposes. Averaged results will be provided to the Commander requesting the survey and will be accumulated to a database of results from all organizations surveyed in your Service.

d. Participation: Response to this survey is voluntary. Failure to participate will lessen the ability of your commander to identify concerns and will hamper efforts by DoD to track trends in equal opportunity and organizational issues. Your response is needed to ensure the validity of the survey. We appreciate your participation.

This survey was initially constructed by the Center for Applied Research and Evaluation, University of Mississippi under Contract F08606-89-C-007 from Defense Equal Opportunity Management Institute, Patrick Air Force Base, FL 32925-6685. For further information, see Dansby, M. R., & Landis, D. (1991). Measuring Equal Opportunity Climate in the Military Environment. *International Journal of Intercultural Relations, 15*, 389-405.

MILITARY EQUAL OPPORTUNITY CLIMATE SURVEY (MEOCS)

General Instructions
(Please read before beginning the survey)

This survey is authorized by your command to measure the equal opportunity climate in your organization. We need to gauge the *potential* frequency of certain kinds of actions. We have gathered the list of actions from military people like yourselves. In part I of the survey (items 1 through 50), we ask that you estimate the *chances* that the action occurred during your last 30 duty days in your assigned unit or organization. If you are a member of a Reserve or National Guard unit, "your last 30 duty days" refers to the last 30 days you spent *at your unit* (not necessarily the past *consecutive* 30 days).

For Part I (items 1 through 50) you will use the following scale to make your judgments:

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high* chance that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

EXAMPLE: IF, IN YOUR OPINION, THERE IS A VERY HIGH CHANCE THAT "A MALE GAVE A 'WOLF WHISTLE' TO A FEMALE," YOU WOULD ASSIGN A "1" TO THAT ACTION.

Remember: **YOU NEED NOT HAVE PERSONALLY SEEN OR EXPERIENCED THE ACTIONS.** We only want your opinion on the chances - or probability - that the actions *MIGHT* have occurred during your last 30 duty days in your assigned unit or organization.

MORE INSTRUCTIONS ON NEXT PAGE

General Instructions (Continued)

For the purposes of this survey . . .

"**minority**" includes males or females of the following racial/ethnic groups:

- BLACK/AFRICAN-AMERICAN (NOT OF HISPANIC ORIGIN)
- HISPANIC
- ASIAN-AMERICAN OR PACIFIC ISLANDERS
- NATIVE AMERICAN/ALASKAN NATIVE

"**majority**" or "**white**" includes males and females NOT IN THE GROUPS LISTED ABOVE.

"**commander,**" "**commanding officer,**" or "**CO**" means any officer, noncommissioned officer, chief petty officer, or civilian supervisor in a position of command or leadership, at any level in the organization.

"**organization**" refers to the Command, Directorate, Division, Branch, or Unit to which you are assigned.

REMEMBER:

- FOR ITEMS 1 - 50, RATE THE LIKELIHOOD OF EACH ACTION OCCURING IN YOUR ORGANIZATION, EVEN IF YOU HAVE NOT PERSONALLY OBSERVED OR EXPERIENCED IT.
- USE A #2 PENCIL TO ANSWER EACH ITEM ON THE RESPONSE SHEET PROVIDED
- TRY TO BE AS ACCURATE AS YOU CAN; BUT FOR MOST OF THE ITEMS THERE ARE NO RIGHT OR WRONG ANSWERS
- ON QUESTIONS 101 THROUGH 124 – THE INFORMATION PROVIDED "WILL NOT" BE USED TO IDENTIFY WHO YOU ARE. IT IS USED BY A COMPUTER TO IDENTIFY GROUPS OF PEOPLE (SUCH AS - OFFICER, ENLISTED, ETC). **YOUR ACCURACY IS IMPORTANT TO GAINING AN HONEST ASSESSMENT OF YOUR ORGANIZATION.**
- AFTER COMPLETING THE QUESTIONNAIRE, SEAL IT AND YOUR ANSWER SHEET IN THE ENVELOPE PROVIDED (IF PROVIDED) AND RETURN THE SURVEY TO YOUR SURVEY ADMINISTRATOR.

IMPORTANT:

BEFORE BEGINNING THE SURVEY:

1. LEAVE THE AREAS MARKED "**LOCATION CODE**" AND "**SERVICE CODE**" BLANK.
2. IN THE AREA MARKED "**ADMIN NO.**" AT THE TOP OF YOUR ANSWER SHEET, WRITE THE FOLLOWING: **99999** <-- This number is assigned by DEOMI

PART I

Use the following scale to make your judgments:

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high* chance that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

During your last 30 duty days at your duty location:

1. Organization parties, picnics, award ceremonies and other special events were attended by both majority and minority personnel.

2. The spouses of majority and minority personnel mixed and mingled during special events.

3. A majority person told several jokes about minorities.

4. The Commander/CO did not appoint a qualified majority in a key position, but instead appointed a less qualified minority.

5. Majority and minority supervisors were seen having lunch together.

6. A majority first-level supervisor made demeaning comments about minority subordinates.

7. Majority and minority personnel were seen having lunch together.

8. A race relations survey was taken, but no groups other than blacks and whites were used.

9. A majority member in your organization directed a racial slur at a member of another organization.

10. A majority supervisor frequently reprimanded a minority subordinate but rarely reprimanded a majority subordinate.

11. The supervisor had lunch with a new minority member (to make him/her feel welcome), but did not have lunch with a majority member who had joined the organization a few weeks earlier.

12. A group of majority and minority personnel made reference to an ethnic group other than their own using insulting ethnic names.

13. Graffiti written on the organization's rest room or latrine walls "put down" minorities or women.

14. A new minority person joined the organization and quickly developed close majority friends from within the organization.

15. A minority man made off-color remarks about a minority woman.

16. A supervisor discouraged cross-racial dating among personnel who would otherwise be free to date within the organization.

17. A minority man was selected for a prestigious assignment over a majority man who was equally, if not slightly better, qualified.

18. A majority supervisor did not select a qualified minority subordinate for promotion.

19. When the Commander/CO held staff meetings, women and minorities, as well as majority men, were asked to contribute suggestions to solve problems.

20. A majority member complained that there was too much interracial dating among other people in the organization.

21. A supervisor always gave the less desirable additional duties to men.

PART I (Continued)

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high* chance that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

22. A minority woman was selected to receive an award for an outstanding act even though she was not perceived by her peers as being as qualified as her nearest competitor, a majority man.

23. A minority member was assigned less desirable office space than a majority member.

24. The term "dyke" (meaning lesbian), referring to a particular woman, was overheard in a conversation between unit personnel.

25. The Commander/CO changed the duty assignments when it was discovered that two persons of the same minority were assigned to the same sensitive area on the same shift.

26. Minorities and majority members sat at separate tables in the cafeteria or designated eating area during lunch hour.

27. Most equal opportunity staff were either females or minorities.

28. A Commander/CO giving a lecture took more time to answer questions from majority members than from minority members.

29. Majority and minority members were seen socializing together.

30. When reprimanding a male minority member, the majority supervisor used terms such as "boy."

31. Second level female supervisors had both males and females as subordinates.

32. A male supervisor touched a female peer in friendly manner, but never touched male peers.

33. A majority and a minority person turned in similar pieces of equipment with similar problems. The minority person was given a new issue; the majority member's equipment was sent to maintenance for repair.

34. A motivational speech to a minority subordinate focused on the lack of opportunity elsewhere; to a majority subordinate, it focused on promotion.

35. Majority personnel joined minority friends at the same table in the cafeteria or designated eating area.

36. When a female subordinate was promoted, a male peer made the comment, "I wonder who she slept with to get promoted so fast."

37. A supervisor gave the same punishment to minority and majority subordinates for the same offense.

38. A qualified minority first-level supervisor was denied the opportunity for professional education by his/her supervisor. A majority first-level supervisor with the same qualifications was given the opportunity.

39. When a woman complained of sexual harassment to her superior, he told her, "You're being too sensitive."

40. Offensive racial/ethnic names were frequently heard.

41. The only woman in a work group was expected to provide housekeeping supplies, such as needle and thread, aspirin, etc., in her desk.

42. Racial/ethnic jokes were frequently heard.

43. A woman was asked to take notes and provide refreshments at staff meetings (such duties were not part of her job assignment).

PART I (Continued)

1 = There is a *very high chance* that the action occurred.
2 = There is a *reasonably high chance* that the action occurred.
3 = There is a *moderate chance* that the action occurred.
4 = There is a *small chance* that the action occurred.
5 = There is *almost no chance* that the action occurred.

44. A supervisor gave a minority subordinate a severe punishment for a minor infraction. A majority member who committed the same offense was given a less severe penalty.

45. A better qualified man was not picked for a good additional duty assignment because the Commander/CO said it would look better for equal opportunity to have a woman take this duty.

46. A supervisor referred to female subordinates by their first names in public, while using titles for the male subordinates.

47. The Commander/CO assigned an attractive woman to escort visiting male officials around because, "We need someone nice looking to show them around."

48. A woman who complained of sexual harassment was not recommended for promotion.

49. A man stated, "Our unit worked together better before we had women in the organization."

50. At non-official social activities, minorities and majority members were seen socializing in the same group.

PART II

In this part of the survey, answer the following questions regarding *how you feel about your organization.*

PART II (Continued)

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

51. I would accept almost any type of assignment in order to stay in this organization.

52. I find that my values and the organization's values are very similar.

53. I am proud to tell others that I am part of this organization.

54. I could just as well be working in another organization as long as the type of work was similar.

55. I feel very little loyalty to this organization.

56. This organization really inspires me to perform my job in the very best manner possible.

57. It would take very little change in my present circumstances to cause me to leave this organization.

58. I am extremely glad to be part of this organization compared to other, similar organizations that I could be in.

59. Assuming I could stay, there's not too much to be gained by sticking with this organization to retirement.

60. Often, I find it difficult to agree with the policies of this organization on important matters relating to its people.

61. For me, this organization is the best of all possible ways to serve my country.

62. Becoming part of this organization was definitely not a good move for me.

PART III

Please respond to the following items regarding the *effectiveness of your work group* (all persons who report to the same supervisor that you do) using the scale below:

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

63. The amount of output of my work group is very high.

64. The quality of output of my work group is very high.

65. When high priority work arises, such as short suspenses, crash programs, and schedule changes, the people in my work group do an outstanding job in handling these situations.

66. My work group always gets maximum output from available resources (e.g., personnel and materials).

67. My work group's performance in comparison to similar work groups is very high.

PART IV

The questions in Part IV are used to determine *how satisfied you are with some specific job-related issues*. Indicate your degree of satisfaction or dissatisfaction by choosing the most appropriate phrase:

1 = *very* satisfied
2 = *moderately* satisfied
3 = *neither* dissatisfied nor satisfied
4 = *somewhat* dissatisfied
5 = *very* dissatisfied

PART IV (Continued)

Level of satisfaction with:

68. The chance to help people and improve their welfare through the performance of my job.

69. My amount of effort compared to the effort of my co-workers.

70. The recognition and pride my family has in the work I do.

71. My job security.

72. The chance to acquire valuable skills in my job that prepare me for future opportunities.

73. My job as a whole.

PART V

In this section, we are asking for your opinions about certain issues. On your answer sheet, mark your response to each of these statements, as follows:

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

74. Minorities were better off before this equal opportunity business got started.

75. More severe punishments are given out to minority as compared to majority offenders for the same types of offenses.

76. Majority supervisors in charge of minority supervisors doubt the minorities' abilities.

77. Minorities get more extra work details than majority members.

78. I understand the feelings of people of other races better since I became associated with the military.

PART V (Continued)

1 = *totally agree* with the statement
2 = *moderately agree* with the statement
3 = *neither agree nor disagree* with the statement
4 = *moderately disagree* with the statement
5 = *totally disagree* with the statement

79. The military is fully committed to the principle of fair treatment for all its members.

80. After duty hours, people should stick together in groups made up of their race only (e.g., minorities only with minorities and majority members only with majority members).

81. Majority males act as though stereotypes about minorities and women are true (for example, "Blacks are lazy").

82. Trying to bring about the integration of women and minorities is more trouble than it's worth.

83. If the race problem can be solved anywhere, it can be solved in the military.

84. Majority males have a better chance than minorities or women to get the best training opportunities.

85. Majority members assume that minorities commit every crime that occurs, such as thefts in living quarters.

86. Majority males do not show proper respect for minorities or women with higher rank.

87. Minorities and majority members would be better off if they lived and worked only with people of their own races.

88. I dislike the idea of having a supervisor of a race different from mine.

89. Majority males are not willing to accept criticism from minorities or women.

90. Majority members get away with breaking rules that result in punishment for minorities.

91. Some minorities get promoted just because they are minorities.

92. Power in the hands of minorities is a dangerous thing.

93. Minorities and women frequently cry "prejudice" rather than accept responsibility for personal faults.

94. I would not like to have a supervisor of the opposite sex.

95. This organization provides a good career chance for advancement for minorities and women.

96. Minorities and women get away with breaking rules that majority males are punished for.

97. There should be more close friendships between minorities and majority members in this organization.

98. In this organization, I have personally felt discriminated against because of my race.

99. Minorities don't take advantage of the educational opportunities that are available to them.

100. Many minorities act as if they are superior to majority members.

PART VI

In this last section, please tell us some things about yourself. This information will be used for statistical analysis only. *No attempt will be made to identify you.*

101. I have personally experienced an incident of discrimination (racial, sexual, or sexual harassment) directed at me from *military* sources (including civilians employed by the military).

1 = YES 2 = NO

102. I filed a complaint on the incident.

1 = YES
2 = NO
6 = N/A

103. I was satisfied with the disposition of the complaint that I filed.

1 = YES 2 = NO 6 = N/A

104. I have personally experienced an incident of discrimination (racial, sexual, or sexual harassment) from *non-military* sources.

1 = YES 2 = NO

105. I filed a complaint on the incident.

1 = YES
2 = NO
6 = N/A

106. I was satisfied with the disposition of the complaint that I filed.

1 = YES 2 = NO 6 = N/A

107. The highest level of education I have completed is:

1 = less than graduating from high school.
2 = high school graduate or G.E.D.
3 = some college.
4 = college degree.
5 = advanced college work or degree.

108. Before I joined the military (or started working for the government), the approximate percentage of my close personal friends who were of my same racial/ethnic group was

1 = 25 percent or less.
2 = more than 25 but less than 50 percent.
3 = more than 50 but less than 75 percent.
4 = more than 75 but less than 100 percent.
5 = 100 percent.

109. Currently, I have at least one close personal friend (a person with whom I would feel comfortable discussing very personal problems) who is of a different racial/ethnic group than myself.

1 = YES 2 = NO

110. Most people would rate the equal opportunity climate in this organization

1 = very poor
2 = poor
3 = about average
4 = good
5 = very good

111. I personally would rate the equal opportunity climate in this organization

1 = very poor
2 = poor
3 = about average
4 = good
5 = very good

112. I am

1 = female 2 = male.

113. My racial/ethnic group is

1 = American Indian or Alaskan Native.
2 = Asian or Pacific Islander.
3 = African-American (not of Hispanic origin).
4 = Hispanic.
5 = White (not of Hispanic origin).
6 = Other.

114. I am a(n):

1 = officer
2 = warrant officer
3 = enlisted member
4 = Federal civilian employee (DoD affiliated)
5 = Federal civilian employee (not DoD affiliated)
6 = other (e.g., private civilian, State employee)

115. If enlisted, what pay grade?

1 = E1 - E3
2 = E4 - E5
3 = E6
4 = E7
5 = E8 - E9
6 = Not enlisted

116. If warrant officer, what pay grade?

1 = W1
2 = W2
3 = W3
4 = W4
5 = W5
6 = not a warrant officer

117. If commissioned officer, what pay grade?

1 = O1-O2
2 = O3
3 = O4
4 = O5
5 = O6 or above
6 = not a military officer

118. My age is

1 = under 20 years.
2 = 20 - 25.
3 = 26 - 30.
4 = 31 - 40.
5 = 41 - 50.
6 = 51 or over.

119. My Branch of Service is:

1 = Air Force.
2 = Army.
3 = Navy.
4 = Marine Corps.
5 = Coast Guard.
6 = Federal Civil Service.

120. My organization is best described as:

1 = Active duty military (including Coast Guard)
2 = Reserves (including Coast Guard)
3 = National Guard
4 = DoD Federal Civilian
5 = Non-DoD Federal Civilian
6 = Other

121. If GS or GM civilian employee, what pay grade?

1 = GS 1-4
2 = GS 5-7
3 = GS 8-10
4 = GS/GM 11-13
5 = GS/GM 14-15
6 = not a GS or GM civilian

122. If Wage Grade civilian employee, what pay grade?

1 = WG 1-5
2 = WG 6-9
3 = WG 10-13
4 = WG 14-16
5 = WG 17-18
6 = not a Wage Grade civilian

123. If SES civilian employee, what pay grade?

1 = SES 1-2
2 = SES 3-4
3 = SES 5-6
4 = not an SES civilian

124. If you are a member of the National Guard or Reserves, how would you classify your duty?

1 = Weekends and annual training only
2 = Individual Mobilization Augmentee
3 = Technician
4 = Active Guard/Reserve
5 = Other Guard or Reserve employee
6 = I am not a Guard or Reserve member

WAIT...HAVE YOU WRITTEN YOUR ADMIN. NO. (PAGE 3) ON YOUR RESPONSE SHEET? IF NOT, PLEASE DO SO NOW. Please provide any written comments on a separate sheet of paper addressed to Defense Equal Opportunity Management Institute, Directorate of Research. THEN, SEAL YOUR ANSWER SHEET, QUESTIONNAIRE, AND ANY WRITTEN COMMENTS IN AN ENVELOPE AND RETURN THE ENVELOPE TO YOUR SURVEY ADMINISTRATOR. You may send comments regarding this questionnaire directly to:

Directorate of Research
Defense Equal Opportunity Management Institute
Patrick Air Force Base, FL 32925-3399

End of Questionnaire

WHAT THE MEOCS MEASURES

On the MEOCS there are 100 items dealing with EO and organizational effectiveness (OE) issues. Through a statistical technique known as factor analysis, items that measure the same perceptual domain are combined into scales. In all, the MEOCS measures nine EO and three OE factors. These are all measured on a five-point scale. The scale anchors (the words associated with each number on the scale) vary; however for all scales, **the higher the score the more favorable the climate**.

The following is a brief description of the 12 factor scales:

Factors 1-5 focus on perceptions of EO behaviors *within the respondent's unit.*

1. Sexual Harassment and (Sex) Discrimination. Perceptions of how extensively sexual harassment and discrimination against women are thought to occur *within the respondent's unit.* The factor is rated on the following scale, representing the respondent's *estimation that sexually harassing or discriminating actions have taken place* in the unit within the last 30 days:

1) There is a *very high* chance that the action occurred.
2) There is a *reasonably high* chance that the action occurred.
3) There is a *moderate* chance that the action occurred.
4) There is a *small* chance that the action occurred.
5) There is *almost no* chance that the action occurred.

2. Differential Command Behavior toward Minorities. Perceptions of differential treatment of minority members within the unit (for example, if they are not as likely to be offered opportunities for Service-related schools). The same scale is used as for factor 1.

3. Positive Equal Opportunity Behaviors. Estimates of how well majority members and minority members get along in the unit and how well integrated women and minorities are in the unit's functioning. The scale *addresses how frequently positive actions occur* and is the same as for factor 1, except the numbers are reversed (i.e., 1 is almost no chance and 5 is a very high chance). Therefore, as with the other factor scores, higher is better.

4. Racist/Sexist Behaviors. This factor taps perceptions of traditional overt racist or sexist behaviors, such as name calling and telling sexist or racist jokes. The same scale is used as for factor 1.

5. "Reverse" Discrimination (I). Measures the extent to which so-called "reverse" discrimination occurs *within the unit.* The concept of "reverse" discrimination has no legal basis; however, it is a perceptual concern in the minds of many survey respondents, and, as noted sociologist W. I. Thomas has observed, that which is perceived as real is real in its consequences. In the minds of many, "reverse" discrimination is preferential treatment of women or minorities at the expense of white males. This factor focuses on how frequently "reverse" discrimination is thought to occur *within the unit.* (Factor 10, to be discussed later, measures perceptions of "reverse" discrimination in a broader context.) The same scale is used as for factor 1.

Factors 6-8 measure perceptions of *organizational effectiveness (OE)*. They are **not on the same scale as factors 1-5.**

6. Commitment. Measures commitment to the organization. A higher score means the respondent identifies with the organization to which he or she is assigned and would like to remain in that organization. Statements reflecting commitment are rated on the following scale:

1) *Totally agree* with the statement.
2) *Moderately agree* with the statement.
3) *Neither agree nor disagree* with the statement.
4) *Moderately disagree* with the statement.
5) *Totally disagree* with the statement.

A sample statement is, "I feel very little loyalty to this organization." A rating of 5 would therefore mean a high degree of loyalty to the organization. (Again, some of the statements are positively worded and some are negatively worded, but *for the factor score all responses are re-computed so that a higher score is better.*)

7. Perceived Work Group Effectiveness. This factor reflects the degree to which the respondent's unit is perceived to be productive and effective in accomplishing its mission. It is measured in the same way as factor 6.

8. Job Satisfaction. Indicates the degree of satisfaction the respondent has with his or her current job. It is measured on the following scale:

1) *Very* dissatisfied.
2) *Somewhat* dissatisfied.
3) *Neither* dissatisfied or satisfied.
4) *Moderately* satisfied.
5) *Very* satisfied

Factors 9-11 measure more general attitudes toward EO issues. They reflect perceptions about the Service and society as a whole, and not just within the respondent's specific unit of assignment.

9. Discrimination Against Minorities and Women. In general, how much are minorities and women discriminated against? A number of statements reflecting varied views are rated on the following scale.

1) *Totally agree* with the statement.
2) *Moderately agree* with the statement.
3) *Neither agree nor disagree* with the statement.
4) *Moderately disagree* with the statement.
5) *Totally disagree* with the statement.

A sample statement is, "Minorities get more extra work details than majority members."

10. "Reverse" Discrimination (II). Similar to the concept measured in factor 5, but relating more generally to the Service and the general environment and not just the particular unit of assignment. The same scale is used as for factor 9.

11. Attitudes Toward Racial Separatism. This factor measures how much respondents believe the races should remain separate. It uses the same scale as factor 9.

Factor 12 is an overall, global assessment of EO climate in the unit.

12. Overall EO Climate. This is a global measure of how the respondent views EO within the unit of assignment. It reflects the respondent's rating of the EO climate on the following scale:

1) Very poor.
2) Poor.
3) About average.
4) Good.
5) Very Good.

Again, note the difference between this scale and other EO scale ratings in the survey. It is <u>not</u> a summary or average of other factors; rather, it gives a separate assessment and should not be compared directly to the other scales of EO.

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ABSTRACT TRANSLATIONS

La combinaison du déclin de la menace soviétique et la complexité technologique croissante vont finalement produire une force militaire américaine standard et de taille réduite au début du 21ème siècle. Plusieurs scénarios sont présentés sur la maniére dont ces changements vont influencer les problémes d'opportunités égales dans les forces armées.

Les articles ci-dessous traitent de ce probléme spècifique et examinent les diverses facettes et les dimensions d'opportunités égales dan les forces armées à l'aube des années 90. (author-supplied abstract)

La combinación en la disminución de amenazas Sovieticas y en el aumento complejo de la Tecnología van eventualmente a producir un decenso en la coordinación y el equilibrio de la milicia Americana al enfrentar el siglo veinte-uno. Diferentes escenarios son presentados acerca de como estos cambios van a influenciar el tema de la igualdad dentro de la milicia. Los siguientes árticulos de este tema examinan las varias pacetas y dimensiones de igualdad dentro de la milicia al entrar en los 90's. (author-supplied abstract)

Los puntos de vista expresados aquí son aquellos del autor y no necesariamente reflejan los puntos de vistas o politica del departamento de defensa de los Estados Unidos.

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MEASURING EQUAL OPPORTUNITY CLIMATE IN THE MILITARY ENVIRONMENT

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ABSTRACT. Construction and initial validation of an instrument to assess equal opportunity climate in the military are described. The research was conducted in three phases: survey design and preliminary validation at the Defense Equal Opportunity Management Institute (DEOMI), Patrick Air Force Base, FL; field testing and further validation at operational military units from all Military Services; and subsequent revision and implementation as part of a continuing organizational analysis service for military commanders. Results are interpreted as supporting use of the instrument, the Military Equal Opportunity Climate Survey (MEOCS), for the intended purpose.

Considerable research has been conducted on the climate of organizations (Forehand & Gilmer, 1964; Litwin & Stringer, 1968; Tagiuri, 1968) and on aspects of equal opportunity (EO; Fahey & Pati, 1975; Faley, 1982). However, little research has attempted to combine the concepts and determine what constitutes equal opportunity climate (EOC). Some have pointed to the impact of civil liberties climate on organizational outcomes (Scheinfeld & Zalkind, 1987) and the effect of organizational climate on EO and affirmative action (Sargent, 1978), but the personal and organizational influences of EO climate remain largely unexplored. Furthermore, little is known about the relationship between EOC and other organizational variables, such as satisfaction, commitment, and effectiveness.

The impact of EO climate may be extensive in organizations. At the very least, an "atmosphere of discrimination" serves as a basis for legal action (under Title VII of the Civil Rights Act of 1964) by individuals against the organization (Baxter, 1985; Laurent, 1987). Bowers (1975) found a negative relationship between organizational climate and felt discrimination; however, work by Parker (1974) and Pecorella (1975) sug-

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gests that the relationship may be keyed to interpersonal interactions within particular work groups. Griesemer (1980) found significant correlations between racial climate and unit effectiveness.

Other researchers have demonstrated consistent differences between racial, gender, and officer/enlisted groups in perceptions of EO and organizational climate. Brown, Nordlie, and Thomas (1977) found significant differences between whites and blacks in how they viewed the "race problem" in the Army. Spicher (1980) demonstrated that Air Force men perceived a significantly more favorable organizational climate than military women; similarly, officers perceived the climate more favorably than enlisted members. A survey conducted by the Army also showed differences between minorities and whites and between enlisted members and officers on items dealing with EO (Soldiers Report IV, 1986).

DEPARTMENT OF DEFENSE EQUAL OPPORTUNITY INSTITUTE

Concern with equal opportunity (EO) and treatment for minorities and women in the military provided the impetus for creation of the Defense Equal Opportunity Management Institute (DEOMI), formerly the Defense Race Relations Institute (DRRI). DRRI was created by the Department of Defense in 1971, with a mandate to develop and implement a training program in race relations designed to prevent racial unrest, tension, or conflict from impairing combat readiness and efficiency (Day, 1983; Lovejoy, 1978). The current name (adopted in 1979) reflects a change of focus to include equal opportunity for women in the military and to emphasize a shift toward a management-oriented approach to equal opportunity. With the change came an emphasis on examining institutional discrimination, as opposed to personal racism or sexism, and organizational management approaches. DEOMI's 16-week resident curriculum consists of a common core plus special Service-specific programs.

MILITARY EQUAL OPPORTUNITY SURVEYS

Although previous research on climate in military organizations has not focused on the construct of EOC, several researchers have attempted to assess both organizational climate and race relations climate in the military. Bowers (1975) measured organizational climate variables in the Navy by using the Survey of Organizations (SoO). In general he found that "on all measures of organizational climate . . . Navy respondents were lower than nearly three fourths of civilian respondents." The findings revealed more felt discrimination among minorities and particularly blacks, and at the same time showed a negative relationship between felt discrimination and climate (i.e., the better the climate, the less the felt discrimination). In another Navy study, Parker (1974) found almost no

difference between races in perceptions of organizational climate. Results indicated that racial composition of the work group was a critical moderator variable of the relationship between experienced practices and felt discrimination. Research by Pecorella (1975) indicated that organizational climate measures presented patterns of (if anything) perceived "reverse" discrimination (although objective data, such as advancement and training opportunities did not). Pecorella also noted that felt personal discrimination seems to be closely tied to one's immediate work environment (particularly to advancement opportunities and friendly relations with one's peers). This research suggests that much of the perception that one is discriminated against stems from job characteristics (e.g., promotions) and relations with one's co-workers.

In surveys by the Army Research Institute (Brown, Nordlie, & Thomas, 1977) there was a notable difference in how the "race problem" was seen by whites and blacks in the Army. Whites in the Army tended to accept the proposition that the Army is free from racial discrimination. Blacks saw the Army as discriminatory. This difference also correlated with grade. Officers and higher enlisted saw the problems as less serious than did the lower enlisted grades. The 1972 results were virtually replicated in 1974, in spite of the existence of an all-volunteer Army and an increase in black enlisted individuals. In 1978 Hiett and Nordlie, in their study on unit race relations program in the Army, concluded that despite the relative absence of overt interracial violence, race-related tensions persisted.

Most research on climate and race relations in the military has focused on differences between blacks and whites. That focus has now been expanded to included other racial/ethnic minorities and sexual discrimination and harassment. In one of the few research efforts in the military regarding sexual harassment, a survey of 104 Navy women (Reily, 1980), almost all had experienced sexual harassment in their careers; lower grade enlisted women were harassed the most. The data indicated that sexual harassment negatively affected the attitude of the female service member, as well as her desire and intent to remain.

It is apparent that the military could benefit from a reliable and valid measure of EOC. This instrument could be used, along with other data such as objective management indices, to effectively assess EOC.

OBJECTIVES OF PRESENT RESEARCH

The objectives of the present research were to provide a definition of EOC, to develop and begin to validate an instrument to measure EOC that can be used by all Services, and to hypothesize a model that relates EOC to other organizational variables.

The research was conducted in three phases. In the preliminary phase, a definition and model of EOC were proposed, and a survey was designed

to measure the construct. In addition to perceptual measures of equal opportunity behaviors, the survey included measures of organizational effectiveness and a number of items from a race relations survey developed by the Army Research Institute for the Behavioral and Social Sciences in the mid-1970s (Hiett et al., 1978). In the next phase, a revised version of the survey was field tested (Landis, 1990) at selected sites from all Military Services. Finally, based on results from the field study, the survey was further revised and offered to field commanders as a management information tool.

PHASE 1

In phase 1, the initial survey was developed based on a critical-incident approach and the definition and model described below.

Method

Definition

For purposes of this research, equal opportunity climate is defined as:

> . . . The expectation by individuals that opportunities, responsibilities, and rewards will be accorded on the basis of a person's abilities, efforts, and contributions, and not on race, color, sex, religion, or national origin. It is to be emphasized that this definition involves the individual's perceptions and may or may not be based on the actual witnessing of behavior. (Landis, Fisher, & Dansby, 1988, p. 488)

Model of Equal Opportunity Climate

The Landis–Fisher Model (Figure 1) developed in this phase is an expansion of the definition given above. EO Climate is seen as the result of several cognitive operations, which, in turn, have antecedents both in the person's past history and in events in the outside world. At the same time, EO Climate has impact on a number of cognitive and motivational processes that are part of what may be called "readiness."

Briefly, the individual comes to the situation with a set of expectations that are the result of past experiences and information about the locale. These expectations involve types of behaviors that will likely occur, and they result in a set of perceptual screens that act on the actual behaviors. Perceptions of equal opportunity behaviors are related to the level of effort the individual expends in order to obtain some kind of reward. Actual behaviors, both by others and by the individual, meanwhile engender some kind of response (or lack of response) from the command. This response is perceived by the individual (filtered by his or her

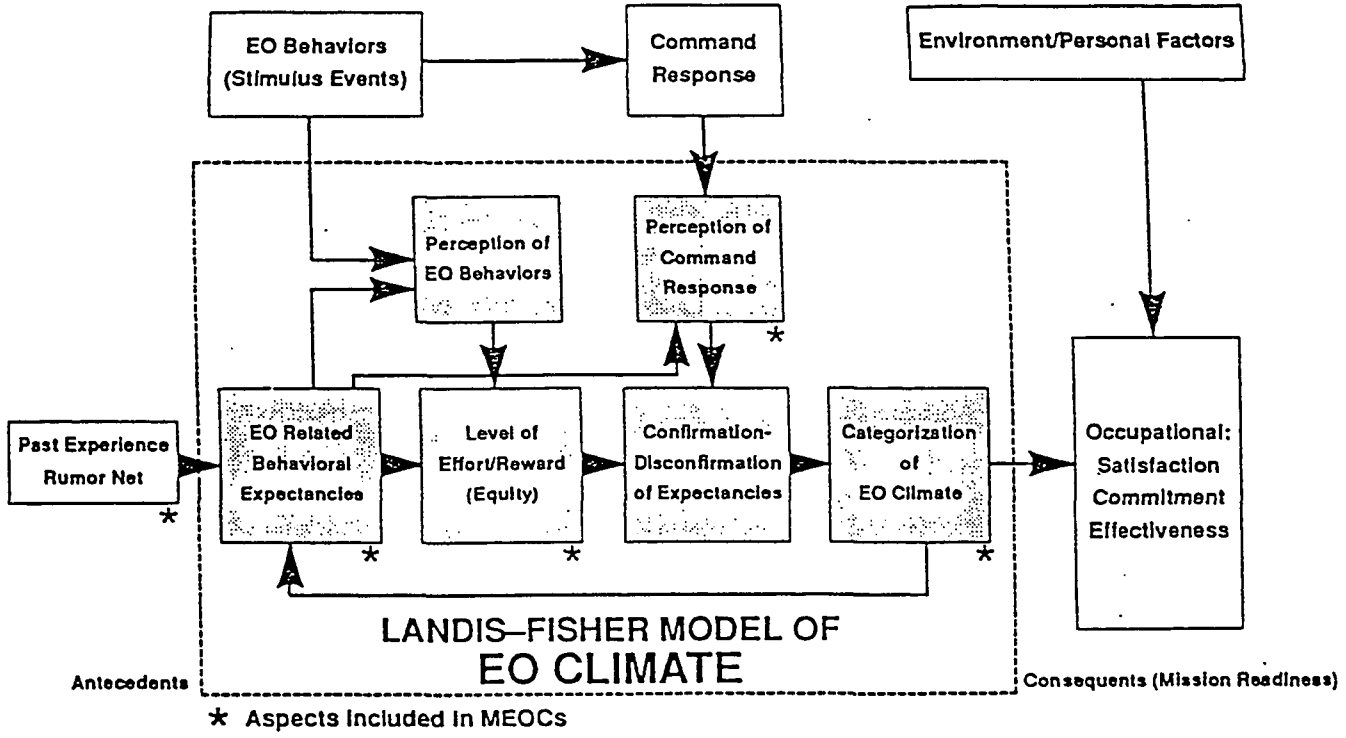

FIGURE 1. Model of equal opportunity climate and readiness.

expectations), and the expectations confirmed or disconfirmed (e.g., that a particular EO behavior is common or rare in a given locale). Finally, the locale is categorized as, at the very least, a *good* or *poor* EO site. The categorization acts to change the expectations and the process begins again.

Thus, EO Climate is essentially an internal process that is related to perceptions and interpretations of environmental events. As such, the model suggests that command's responses must be timely and vigorous in order to change negative or reinforce positive expectations by personnel.

Sample

The respondents in the first study were the members of DEOMI class 87-2 (51 men, 11 women; 6 officers, 57 enlisted personnel; 42 Army, 5 Air Force, 14 Navy, 2 undefined; the total is less than the number used for analysis due to failure of 11 respondents to provide identifying information).

Questionnaire Design

Elicitation of Behaviors. The academic/training staff of DEOMI (n = 20) were asked to list "Five specific behaviors that would be indicative of 'poor equal opportunity climate.'" Examples of specific behaviors were provided. The emphasis was on a definable unit of behavior, not a series of events spread out over time. Examples of behaviors the staff proposed included the following: "One of the noncommissioned officers consistently tells jokes about blacks and other minorities" and "a male officer frequently touches a female officer but never touches another male officer." Over 100 behaviors were provided and examined for specificity and redundancy. The analysis reduced the list to 78.

Importance Ranking. A separate group of Guard and Reserve personnel (n = 50), taking a DEOMI short course, was asked to assign a rating from 1–10 to each behavior. The lower end of the scale represented *No importance*, while the high end was anchored at *Of critical importance.* After examining the items and the ratings, the number of items was further reduced to 71.

Design of Response Dimensions. Responses were based on a 5-point scale. For the equal opportunity behaviors part of MEOCS, the responses were cast as follows:

1 = *There is almost no chance that the behavior occurred.*
2 = *There is a small chance that the behavior occurred.*
3 = *There is a moderate chance that the behavior occurred.*

4 = *There is a reasonably high chance that the behavior occurred.*
5 = *There is a very high chance that the behavior occurred.*

Selection of Items for Measuring Work-Group Effectiveness and Organizational Commitment. Items for these two sections were taken from two sources. For Work-Group Effectiveness, 15 (later reduced to 12) items from the United States Air Force Organizational Assessment Package (Short, 1985) were selected. These items had high loadings on factors labeled Work-Group Effectiveness and General Organizational Climate. For Organizational Commitment, 15 (later reduced to 12) items from the questionnaire designed by Mowday, Steers, and Porter (1979) were selected and rewritten to conform to a military situation.

Development of Situational Scenarios. In order to test the instrument for discriminant validity, two hypothetical locales were devised. Information was provided on each locale along six dimensions taken from the management indices used by the United States Air Force to assess the level of human relations climate (Department of the Air Force, Air Force Pamphlet AFP 30-13, issued January 21, 1985). The locales were described on each dimension as having "an above-average rate" or "a significant change from the previous year" for the *poor* EO Climate locale. For the *good* locale, the descriptors were "a below-average rate" or "a significant reduction from the previous year" on each dimension. The six dimensions used were as follows:

a. There is (filled in) percentage of Articles 15 for minorities and for whites.
b. There is (filled in) percentage of involuntary separations for minorities and for whites.
c. There is (filled in) percentage of courts-martial for minorities and for whites.
d. Sexual discrimination complaints filed and confirmed are (filled in).
e. Sexual harassment complaints filed and confirmed are (filled in).
f. There has been (filled in) hate group (like Ku Klux Klan) activities in this locale.

(An Article 15 is nonjudicial punishment administered by a commander for relatively minor infractions; involuntary separations are administrative actions in which individuals are separated from the service for the convenience of the service.)

Experimental Design

Variations of the questionnaires were administered twice to the members of DEOMI class 87-2. The purpose of each administration is indicated below.

Administration 1. Lists of the 71 EOC behaviors were given to 74 members of the class. The students were to judge the "chances that the behavior occurred in the non-DEOMI portion of Patrick Air Force Base during the past 30 days." This administration was used to explore the factorial structure of each part of the instrument and to assess the reliability of each factor and the total survey.

Administration 2. This was 7 days after the first survey. Again, the target of Patrick Air Force Base was used; however, the order of the behaviors was randomly mixed from the first administration. In addition, half of each group was asked to rate the *good* locale and half the *poor* locale on each of the 71 behaviors. A manipulation check was added by asking at the end of group of the 71 behaviors how "most people at this locale would rate the equal opportunity climate." The response was made on a 1–5 scale from *very poor* to *very good.* The second administration was used to assess test-retest reliability and to probe the discriminant validity of the survey.

Results and Discussion

Separate Principal Component Factor Analyses of the 71 equal opportunity behaviors were performed for each administration of the "Patrick" and the "good" and "poor" versions. The analyses used unity in the diagonals and Varimax rotation (oblique rotation failed to converge in 25 iterations).

Reliability Analysis

This analysis used the two administrations of the "Patrick" questionnaire. Cronbach alphas were computed for the total and for factors of each administration. In addition, scores were computed for the total and for factors from each administration. These were correlated over all subjects for an estimate of the test-retest reliability.

Manipulation Check

An Analysis of Variance was used with form number (1 or 2, corresponding to the type of scenario provided) as the grouping variable and global EOC as the dependent variable.

Effect of Situation on EOC Factors

From the data obtained on the second administration, factor scores were computed for each subject within each scenario condition. This g

six scores for each respondent. A Multivariate Analysis of Variance wa performed using the six factors as the dependent variables and scenari (good or poor) to group the subjects.

Structure of Equal Opportunity Behaviors

Six factors were retained from the Principal Components Analysis These factors together accounted for 65% of the total variance wit eigenvalues of 33.68 (47.4%), 3.67 (5.2%), 2.77 (3.9%), 2.16 (3.0%), 2.0 (2.8%), and 1.83 (2.6%), respectively. These six were selected using a scre line approach. The names assigned to the dimensions were:

Factor 1: Overall Concern with Equal Opportunity Issues. Items de: with both race and sex discrimination, as well as with administrati reactions to sexual harassment. The focus is on-base behavior.

Factor 2: Differential Behavior by Commanders. Items here deal wit commanders' treating minorities differently.

Factor 3: Stereotypes. These items deal with minorities and wome being treated in stereotypic fashion (e.g., females being mistaken f secretaries).

Factor 4: Sexual Role Definition. These items imply that the military a man's job.

Factor 5: Overt Sexual Harassment. Items deal with superiors usin their positions to demand sexual favors from subordinates.

Factor 6: Covert Sexual Harassment. These items suggest that a wom an's role is to be decorative and subordinate to a man.

Reliability of Survey

In the first administration, the survey exhibited a high degree of inte nal consistency. The Cronbach alpha over all items was .98, and for tw random halves, .96 and .97, respectively. The six scales were also high reliable (average alpha of.90). The correlation between the two halves w .88. On the second administration, the reliabilities of the six scales we satisfactory (average alpha of .89). When the target was changed to t constructed locales, the reliabilities remained quite good (average alpl of .87).

Manipulation Check

The *good* and *bad* scenarios produced the desired effects. The glot judgment means for the two scenarios were significantly differe ($F(1, 59) = 63.07$, $p < .00001$) and in the expected directions [Me (good) = 3.46, Mean (bad) = 2.62].

Effect of External Conditions on Equal Opportunity Climate

The MANOVA used type of "locale" as the independent variable and the six scales as criteria. The Multivariate F was significant (*Mult* $F(12, 104) = 3.46, p < .0001$) as were the univariate tests for five of the six scales. Overt Sexual Harassment (Scale 5) was nonsignificant. The means were all in the expected directions.

These initial results, though based on small numbers of respondents, were encouraging for further development of MEOCS. It appeared to be sensitive to changes in the external world, and the preliminary reliabilities were quite acceptable.

PHASE 2

In the second phase, the MEOCS was revised and subjected to a field test at selected sites from all Military Services. The revised survey included new items designed to measure positive EOCs and a measure of job satisfaction drawn from the Organizational Assessment Package (Short, 1985). It was predicted that previously reported differences in perceptions of men and women, minorities and whites, and officers and enlisted members should obtain in a valid measurement of EO climate. If such differences were found, they would support the validity of the MEOCS. Thus, the purpose of Phase 2 was to further develop the factor structure of MEOCS and to validate the instrument based on these predictions.

Method

Five military sites were initially selected for the validation study, based on the following criteria: all Military Services (including the Coast Guard) must be represented; each site must have representative numbers of female and minority members; the total group must reflect a variety of missions and geographic locations; one site must be overseas. An additional site was added from the Air Force because of its convenience, wide representation of military women, and suitability for testing administration procedures. The sites were selected not to be representative of the Services, but to provide locations where a wide demographic range of military personnel could be assessed directly in on-site survey administrations and interviews.

Military members at each site were selected according to a purposive stratified sample reflecting racial/ethnic, gender, and officer or enlisted categories. Among the 1,650 respondents, Service representation ranged from 97 (Coast Guard) to 607 (Air Force). All major combinations (i.e., black/white, male/female, and officer/enlisted) were represented by at least 200 respondents, with the exceptions of white female officers (109),

black female officers (37), and black male officers (80). The lower incidence of these groups was due to their sparse representation in the Services [white women comprise 11.5% of military officers; black women, 1.5%; and black men, 5.1% (Source: Defense Manpower Data Center, June 1989)].

A team of researchers reflecting racial/ethnic and gender diversity administered the 157-item survey on site in a group setting. Respondents rated 88 MEOCS items on a scale of 1 to 5, according to their estimation of the likelihood that listed behaviors (critical incidents) may have occurred at their duty location during the last 30 days. The survey package also included 12 items measuring commitment to the Service, 5 job satisfaction items, 6 items assessing perceived work-group effectiveness (sources for these items are described in Landis, Fisher, & Dansby, 1988), 27 items adapted from the Racial Attitudes and Perceptions Survey (RAPS; Hiett et al., 1978), several demographic items, and global items asking whether the respondents perceived that they had been victims of discrimination. After each administration a random sample of the group was asked to remain and respond to a structured interview concerning the readability of the survey and its perceived validity for the stated purpose. Questionnaires and computer-scorable answer sheets were collected by the researchers after each administration.

Results and Discussion

The MEOCS portion of the questionnaire was factor-analyzed using principal component analysis with varimax rotation. Five primary factors were identified, accounting for a total of 83.2% of the variance. The factors are listed in Table 1, along with their psychometric properties.

Table 2 presents a summary of significant factor score differences between various racial/ethnic, gender, and personnel category groups.

Commitment to the Service scores were higher for whites than for blacks ($F[1, 1623] = 10.78, p < .01$); higher for males than for females ($F[1, 1623] = 5.01, p < .05$); and higher for officers than for enlisted members ($F[1, 1623] = 20.92, p < .0001$). Officers scored higher than enlisted members on job satisfaction ($F[1, 1623] = 15.85, p < .0001$). Whites rated their work groups higher in effectiveness than did blacks ($F[1, 1623] = 10.56, p < .01$); officers rated work group effectiveness higher than enlisted members did ($F[1, 1623] = 22.88, p < .0001$).

On the RAPS portion, blacks perceived more discrimination against minorities than did whites ($F[1, 1623] = 369.99, p < .0001$); women perceived more than men ($F[1, 1623] = 56.26, p < .0001$); and black officers perceived more than black enlisted, while the reverse was true for whites ($F[1, 1623] = 12.80, p < .05$). On the RAPS "Reverse" Discrimination factor, males perceived greater occurrence than did females

TABLE 1
Initial MEOCS Factor Structure

Factor	No. of Items	Eigenvalue	Alpha
1. Sexual Harassment	21	20.93	.93
2. Differential Command Behaviors	11	4.85	.90
3. Positive EO Behaviors	8	1.85	.77
4. Overt Racist/Sexist Behaviors	6	1.54	.68
5. "Reverse" Discrimination	4	1.03	.50

($F[1, 1623] = 10.90$, $p < .001$); whites perceived more than blacks ($F[1, 1623] = 45.85$, $p < .001$); and black officers perceived more than black enlisted personnel, while the reverse was true for whites ($F[1, 1623] = 8.99$, $p < .01$). On a third RAPS factor, males agreed

TABLE 2
Significant MEOCS Factor Score Differences

Factor	Significant Differences
1	Women perceived occurrence of more sexual harassment behaviors than did men ($F[1, 1623] = 39.62$, $p < .0001$); blacks perceived greater occurrence than whites ($F[1, 1623] = 28.39$, $p < .0001$); black officers perceived greater occurrence than black enlisted, but white enlisted perceived greater occurrence than white officers ($F[1, 1623] = 8.19$, $p < .01$).
2	Women perceived greater occurrence of differential command EO behaviors than did men ($F[1, 1623] = 21.54$, $p < .0001$); blacks perceived greater occurrence than whites ($F[1, 1623] = 241.78$, $p < .0001$); black officers perceived greater occurrence than black enlisted, but white enlisted perceived greater occurrence than white officers ($F[1, 1623] = 5.39$, $p < .05$).
3	Whites perceived greater occurrence of positive EO behaviors than did blacks ($F[1, 1623] = 72.37$, $p < .0001$); officers perceived greater occurrence than enlisted ($F[1, 1623] = 21.11$, $p < .0001$).
4	Blacks perceived greater occurrence of racist/sexist behaviors than did whites ($F[1, 1623] = 13.81$, $p < .001$); white enlisted personnel perceived greater occurrence than officers ($F[1, 1623] = 5.17$, $p < .05$).
5	Males perceived greater occurrence of "reverse" discrimination behaviors than did females ($F[1, 1623] = 6.45$, $p < .01$).

more than females that the races should be kept separate ($F[1, 1623] = 10.99$, $p < .001$), and blacks agreed more than whites that the races should be separated ($F[1, 1623] = 10.20$, $p < .01$).

The results from Phase 2 were interpreted to support the use of MEOCS as a measure of EOC. The psychometric properties were generally considered acceptable; however, additional items were generated after Phase 2 in an attempt to improve the reliability of Factors 4, Overt Racist/Sexist Behaviors, and 5, "Reverse" Discrimination, due to their relatively low alpha values (.68 and .50, respectively). The general pattern of results shows the predicted agreement between MEOCS and other instruments. As predicted, there were significant differences in how males and females, minorities and whites, and officers and enlisted members viewed the EOC. Comparisons between RAPS results and MEOCS results also supported the construct validity of MEOCS.

Based on the Phase 2 effort, a revised MEOCS package was created for Phase 3, field implementation as a management tool for military commanders in the field.

PHASE 3

In Phase 3, information from the field validation was used to create a shorter, more reliable version of MEOCS. Items with the highest factor loadings were retained, and the factor structure and factor names were revised to more accurately reflect item content. This revision resulted in 11 primary factors as listed in Table 3.

Method, Results and Discussion

The revised MEOCS consists of 119 items: 50 Equal Opportunity Behavior items; 12 Commitment items; 5 Work-Group Effectiveness items; 6 Job Satisfaction items; 27 Modified Racial Attitudes and Perceptions Survey items; and 19 items addressing demographic background, experience with discrimination, and overall ratings of EOC. The survey is offered to all Military Services as a service of DEOMI's Research Directorate to help military commanders in the field identify strengths and weaknesses in their organizations. A commander requests the survey from DEOMI and receives the necessary materials and complete instructions on sampling and administration. Completed surveys are returned in sealed envelopes and mailed to DEOMI, where they are analyzed and a feedback package is prepared for the commander. The commander may also request a consulting team from DEOMI to help with further analysis or action planning.

Responses from the first 850 participants in the operational survey program were factor-analyzed and reliabilities were computed. Table 3

TABLE 3
Revised MEOCS Factor Structure

Factor	No. of Items	Alpha
Equal Opportunity Behaviors[a]		
1. Sexual Harassment and Discrimination	10	.90
2. Differential Command Behaviors	10	.90
3. Positive EO Behaviors	10	.84
4. Racist/Sexist Behaviors	8	.85
5. "Reverse" Discrimination	7	.79
Organizational Effectiveness[a]		
6. Commitment	12	.84
7. Work Group Effectiveness	5	.87
8. Job Satisfaction	6	.82
Modified Racial Attitudes and Perceptions[a]		
9. Discrimination Toward Minorities	10	.91
10. Racial Separation	5	.81
11. "Reverse" Discrimination	5	.73

[a]Each section of the survey was factor-analyzed separately.

summarizes the results. In addition to the 11 factors, a 12 measure, Overall EO Climate, is computed. This measure includes two questions that ask respondents for a global estimate of the EO climate at their location on a 5-point scale ranging from *very poor* to *very good*.

GENERAL DISCUSSION

The development of the MEOCS is a significant step in the continued progress of the U.S. Military Services toward the goal of equal opportunity. In the first 6 months that DEOMI offered the survey and consultation program, 36 commanders requested assistance. As more commanders use MEOCS, more in-depth analysis of the relationships between EOC and other organizational factors will be conducted. Future research may also include probability sampling of all Services to establish Service norms for the MEOCS factors. Informal feedback from the commanders using the survey to the DEOMI staff indicates that the survey is a valuable tool in helping them pinpoint concerns and develop action plans to improve organizational functioning and effectiveness. Plans call for continued use of MEOCS in this manner, giving commanders a chance to be proactive in anticipating equal opportunity concerns and addressing them through organizational intervention. As more commanders become aware of the

service, officials at DEOMI expect increases in requests for the survey and broader participation by all services. In a time of reduced military budgets and personnel levels, proactive efforts to increase cohesion through better human relations become all the more important.

AUTHOR NOTES

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The first author served as laboratory representative and co-investigator for all three phases.

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ABSTRACT TRANSLATIONS

La construction et initial valide d'un instrument taxer climat égal de l'occasion dans le militaire est décrit. La recherche fut conduite en trois

phrases: contemple le projet et préliminaire valide à la Défense Direction égale De l'Occasion Institute (DEOMI), Patrick Aviation Base, FL; l'épreuve du champ et ultérie Les services; et révision subséquente et l'outil comme la partie d'un continuer [organizational] le service de l'analyse pour commandants militaires. Les résultats sont interprétés comme appuyer employer de l'instrument, le Militaire Climat Égal De l'Occasion Contemple (MEOCS), pour l'a eu l'intention du but. (l'extrait de l'approvisionnement de l'auteur)

Construcción e inicial vàlido de un instrumento tasar clima igual de ocasión en el militar es descrito. La investigación fue conducida en tres fases: diseño de examen estudio y preliminar válida a la Defensa Instituto Igual De Dirección De Ocasión (DEOMI), Patrick Aire Base De Fuerza, FL; examen de campo y m s v Servicios; y revisión subsiguiente y herramienta como parte de un continuar [organizational] servicio de análisis por comandantes militares. Resultados son interpretado como apoyar uso del instrumento, el Militar Examen estudio Igual De Clima De Ocasión (MEOCS), por el pensó propósito. (resumen de existencia de autor)

APPENDIX F

(CAPTION)

REPORT OF TRIAL JUDGE

I. Data Concerning Defendant
   A. Date of Birth
   B. Sex
   C. Race
   D. Address
   E. Length of Time in Community
   F. Reputation in Community
   G. Family Situation and Background
      1. Situation at time of offense (describe defendant's living situation including marital status and number and age of children)
      2. Family history (describe family history including pertinent data about parents and siblings)
   H. Education
   I. Work Record
   J. Prior Criminal Record and Institutional History (list any prior convictions, disposition, and periods of incarceration)
   K. Military History
   L. Pertinent Physical or Mental Characteristics or History
   M. Other Significant Data About Defendant

II. Data Concerning Offense
   A. Briefly describe facts of offense (including time, place, and manner of death; weapon, if any; other participants and nature of participation)
   B. Was there any evidence that the defendant was under the influence of alcohol or drugs at the time of the offense? If so describe.
   C. Did the defendant know the victim prior to the offense? Yes ..... No.....
      1. If so, describe relationship.
      2. Did the prior relationship in any way precipitate the offense? If so, explain.
   D. Did the victim's behavior in any way provoke the offense? If so, explain.
   E. Data Concerning Victim
      1. Name
      2. Date of Birth
      3. Sex
      4. Race
      5. Length of time in community
      6. Reputation in community
   F. Any Other Significant Data About Offense

III. A. A Plea Entered by Defendant:
Not guilty....; guilty....; not criminally responsible.....

B. Mode of Trial:
Court..... Jury.....
If there was a jury trial, did defendant challenge the jury selection or composition? If so, explain.

C. Counsel
1. Name
2. Address
3. Appointed or retained
(If more than one attorney represented defendant, provide data on each and include stage of proceeding at which the representation was furnished.)

D. Pre-Trial Publicity -- Did defendant request a mistrial or a change of venue on the basis of publicity? If so, explain. Attach copies of any motions made and exhibits filed.

E. Was defendant charged with other offenses arising out of the same incident? If so, list charges; state whether they were tried at same proceeding, and give disposition.

IV. Data Concerning Sentencing Proceeding

A. List aggravating circumstance(s) upon which State relied in the pre-trial notice.

B. Was the proceeding conducted
before same judge as trial? .....
before same jury? .....
If the sentencing proceeding was conducted before a jury other than the trial jury, did the defendant challenge the selection or composition of the jury? If so, explain.

C. Counsel -- If counsel at sentencing was different from trial counsel, give information requested in III C above.

D. Which aggravating and mitigating circumstances were raised by the evidence?

E. On which aggravating and mitigating circumstances were the jury instructed?

F. Sentence imposed: Life imprisonment
Death
Life imprisonment without the possibility of parole

V. Chronology
Date of Offense
Arrest
Charge
Notification of intention to seek penalty of death
Trial (guilt/innocence) -- began and ended
Post-trial Motions Disposed of
Sentencing Proceeding -- began and ended
Sentenced Imposed

VI. Recommendation of Trial Court As To Whether Imposition of Sentence of Death is Justified.

VII. A copy of the Findings and Sentencing Determination made in this action is attached to and made a part of this report.

.....
Judge

CERTIFICATION

I certify that on the ..... day of ....., 19.... I sent copies of this report to counsel for the parties for comment and have attached any comments made by them to this report.

.....
Judge

APPENDIX G

Race of Inmates Under Sentence of Death & Victims as existing on November 20, 1996

Name of Defendant	Race of Defendant	Race & # of Victims
Anthony Grandison	A	C x 2
Vernon Evans	A	same as above
James Perry	A	C x 1; A x 2
Clarence Conyers	A	A x 1
Heath Burch	A	C x 2
Darris Ware	A	A x 2
Wallace Ball	C	C x 1
John Johnson	C	C x 1
Ivan Lovell	A	C x 1
Alex Clermont	A	A x 1
Kevin Wiggins	A	C x 1
Flint Hunt	A	C x 1
John Booth	A	C x 2
Kenneth Collins	A	C x 1
Wesley Baker	A	C x 1
Steven Oken	C	C x 1
Eugene Colvin	A	C x 1

A = African-American
C = Caucasian

Totals:

17 inmates under sentence of death
- 14 African-American
- 3 Caucasian

21 victims
- 16 Caucasian
- 5 African American

16 crimes
- 3 white on white
- 0 white on black
- 9 black on white
- 3 black on black
- 1 black on black & white

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ABSTRACT TRANSLATIONS

La combinaison du déclin de la menace soviétique et la complexité technologique croissante vont finalement produire une force militaire américaine standard et de taille réduite au début du 21ème siècle. Plusieurs scénarios sont présentés sur la maniére dont ces changements vont influencer les problémes d'opportunités égales dans les forces armées.

Les articles ci-dessous traitent de ce probléme spècifique et examinent les diverses facettes et les dimensions d'opportunités égales dan les forces armées à l'aube des années 90. (author-supplied abstract)

La combinación en la disminución de amenazas Sovieticas y en el aumento complejo de la Tecnología van eventualmente a producir un decenso en la coordinación y el equilibrio de la milicia Americana al enfrentar el siglo veinte-uno. Diferentes escenarios son presentados acerca de como estos cambios van a influenciar el tema de la igualdad dentro de la milicia. Los siguientes árticulos de este tema examinan las varias pacetas y dimensiones de igualdad dentro de la milicia al entrar en los 90's. (author-supplied abstract)

Los puntos de vista expresados aquí son aquellos del autor y no necesariamente reflejan los puntos de vistas o politica del departamento de defensa de los Estados Unidos.

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MEASURING EQUAL OPPORTUNITY CLIMATE IN THE MILITARY ENVIRONMENT

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University of Mississippi

ABSTRACT. Construction and initial validation of an instrument to assess equal opportunity climate in the military are described. The research was conducted in three phases: survey design and preliminary validation at the Defense Equal Opportunity Management Institute (DEOMI), Patrick Air Force Base, FL; field testing and further validation at operational military units from all Military Services; and subsequent revision and implementation as part of a continuing organizational analysis service for military commanders. Results are interpreted as supporting use of the instrument, the Military Equal Opportunity Climate Survey (MEOCS), for the intended purpose.

Considerable research has been conducted on the climate of organizations (Forehand & Gilmer, 1964; Litwin & Stringer, 1968; Tagiuri, 1968) and on aspects of equal opportunity (EO; Fahey & Pati, 1975; Faley, 1982). However, little research has attempted to combine the concepts and determine what constitutes equal opportunity climate (EOC). Some have pointed to the impact of civil liberties climate on organizational outcomes (Scheinfeld & Zalkind, 1987) and the effect of organizational climate on EO and affirmative action (Sargent, 1978), but the personal and organizational influences of EO climate remain largely unexplored. Furthermore, little is known about the relationship between EOC and other organizational variables, such as satisfaction, commitment, and effectiveness.

The impact of EO climate may be extensive in organizations. At the very least, an "atmosphere of discrimination" serves as a basis for legal action (under Title VII of the Civil Rights Act of 1964) by individuals against the organization (Baxter, 1985; Laurent, 1987). Bowers (1975) found a negative relationship between organizational climate and felt discrimination; however, work by Parker (1974) and Pecorella (1975) sug-

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gests that the relationship may be keyed to interpersonal interactions within particular work groups. Griesemer (1980) found significant correlations between racial climate and unit effectiveness.

Other researchers have demonstrated consistent differences between racial, gender, and officer/enlisted groups in perceptions of EO and organizational climate. Brown, Nordlie, and Thomas (1977) found significant differences between whites and blacks in how they viewed the "race problem" in the Army. Spicher (1980) demonstrated that Air Force men perceived a significantly more favorable organizational climate than military women; similarly, officers perceived the climate more favorably than enlisted members. A survey conducted by the Army also showed differences between minorities and whites and between enlisted members and officers on items dealing with EO (Soldiers Report IV, 1986).

DEPARTMENT OF DEFENSE EQUAL OPPORTUNITY INSTITUTE

Concern with equal opportunity (EO) and treatment for minorities and women in the military provided the impetus for creation of the Defense Equal Opportunity Management Institute (DEOMI), formerly the Defense Race Relations Institute (DRRI). DRRI was created by the Department of Defense in 1971, with a mandate to develop and implement a training program in race relations designed to prevent racial unrest, tension, or conflict from impairing combat readiness and efficiency (Day, 1983; Lovejoy, 1978). The current name (adopted in 1979) reflects a change of focus to include equal opportunity for women in the military and to emphasize a shift toward a management-oriented approach to equal opportunity. With the change came an emphasis on examining institutional discrimination, as opposed to personal racism or sexism, and organizational management approaches. DEOMI's 16-week resident curriculum consists of a common core plus special Service-specific programs.

MILITARY EQUAL OPPORTUNITY SURVEYS

Although previous research on climate in military organizations has not focused on the construct of EOC, several researchers have attempted to assess both organizational climate and race relations climate in the military. Bowers (1975) measured organizational climate variables in the Navy by using the Survey of Organizations (SoO). In general he found that "on all measures of organizational climate . . . Navy respondents were lower than nearly three fourths of civilian respondents." The findings revealed more felt discrimination among minorities and particularly blacks, and at the same time showed a negative relationship between felt discrimination and climate (i.e., the better the climate, the less the felt discrimination). In another Navy study, Parker (1974) found almost no

difference between races in perceptions of organizational climate. Results indicated that racial composition of the work group was a critical moderator variable of the relationship between experienced practices and felt discrimination. Research by Pecorella (1975) indicated that organizational climate measures presented patterns of (if anything) perceived "reverse" discrimination (although objective data, such as advancement and training opportunities did not). Pecorella also noted that felt personal discrimination seems to be closely tied to one's immediate work environment (particularly to advancement opportunities and friendly relations with one's peers). This research suggests that much of the perception that one is discriminated against stems from job characteristics (e.g., promotions) and relations with one's co-workers.

In surveys by the Army Research Institute (Brown, Nordlie, & Thomas, 1977) there was a notable difference in how the "race problem" was seen by whites and blacks in the Army. Whites in the Army tended to accept the proposition that the Army is free from racial discrimination. Blacks saw the Army as discriminatory. This difference also correlated with grade. Officers and higher enlisted saw the problems as less serious than did the lower enlisted grades. The 1972 results were virtually replicated in 1974, in spite of the existence of an all-volunteer Army and an increase in black enlisted individuals. In 1978 Hiett and Nordlie, in their study on unit race relations program in the Army, concluded that despite the relative absence of overt interracial violence, race-related tensions persisted.

Most research on climate and race relations in the military has focused on differences between blacks and whites. That focus has now been expanded to included other racial/ethnic minorities and sexual discrimination and harassment. In one of the few research efforts in the military regarding sexual harassment, a survey of 104 Navy women (Reily, 1980), almost all had experienced sexual harassment in their careers; lower grade enlisted women were harassed the most. The data indicated that sexual harassment negatively affected the attitude of the female service member, as well as her desire and intent to remain.

It is apparent that the military could benefit from a reliable and valid measure of EOC. This instrument could be used, along with other data such as objective management indices, to effectively assess EOC.

OBJECTIVES OF PRESENT RESEARCH

The objectives of the present research were to provide a definition of EOC, to develop and begin to validate an instrument to measure EOC that can be used by all Services, and to hypothesize a model that relates EOC to other organizational variables.

The research was conducted in three phases. In the preliminary phase, a definition and model of EOC were proposed, and a survey was designed

to measure the construct. In addition to perceptual measures of equal opportunity behaviors, the survey included measures of organizational effectiveness and a number of items from a race relations survey developed by the Army Research Institute for the Behavioral and Social Sciences in the mid-1970s (Hiett et al., 1978). In the next phase, a revised version of the survey was field tested (Landis, 1990) at selected sites from all Military Services. Finally, based on results from the field study, the survey was further revised and offered to field commanders as a management information tool.

PHASE 1

In phase 1, the initial survey was developed based on a critical-incident approach and the definition and model described below.

Method

Definition

For purposes of this research, equal opportunity climate is defined as:

> . . . The expectation by individuals that opportunities, responsibilities, and rewards will be accorded on the basis of a person's abilities, efforts, and contributions, and not on race, color, sex, religion, or national origin. It is to be emphasized that this definition involves the individual's perceptions and may or may not be based on the actual witnessing of behavior. (Landis, Fisher, & Dansby, 1988, p. 488)

Model of Equal Opportunity Climate

The Landis-Fisher Model (Figure 1) developed in this phase is an expansion of the definition given above. EO Climate is seen as the result of several cognitive operations, which, in turn, have antecedents both in the person's past history and in events in the outside world. At the same time, EO Climate has impact on a number of cognitive and motivational processes that are part of what may be called "readiness."

Briefly, the individual comes to the situation with a set of expectations that are the result of past experiences and information about the locale. These expectations involve types of behaviors that will likely occur, and they result in a set of perceptual screens that act on the actual behaviors. Perceptions of equal opportunity behaviors are related to the level of effort the individual expends in order to obtain some kind of reward. Actual behaviors, both by others and by the individual, meanwhile engender some kind of response (or lack of response) from the command. This response is perceived by the individual (filtered by his or her

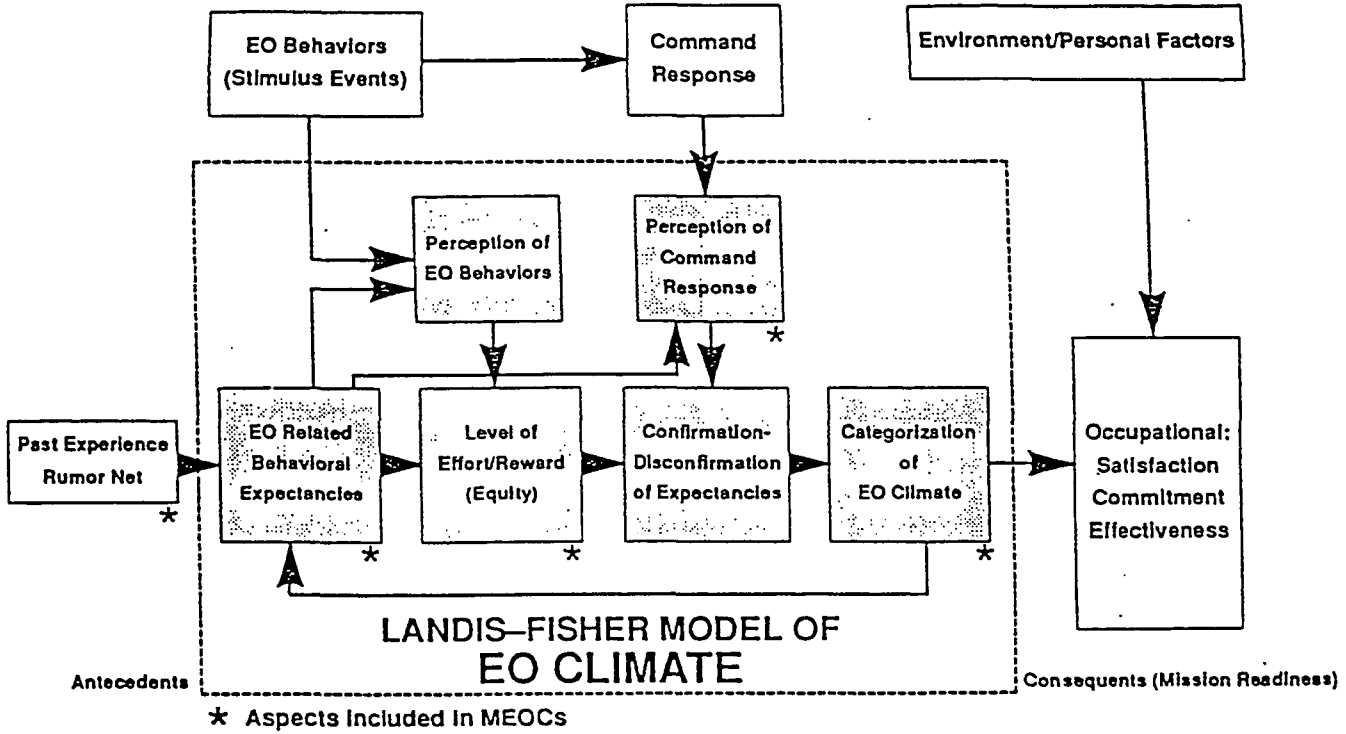

FIGURE 1. Model of equal opportunity climate and readiness.

expectations), and the expectations confirmed or disconfirmed (e.g., that a particular EO behavior is common or rare in a given locale). Finally, the locale is categorized as, at the very least, a *good* or *poor* EO site. The categorization acts to change the expectations and the process begins again.

Thus, EO Climate is essentially an internal process that is related to perceptions and interpretations of environmental events. As such, the model suggests that command's responses must be timely and vigorous in order to change negative or reinforce positive expectations by personnel.

Sample

The respondents in the first study were the members of DEOMI class 87-2 (51 men, 11 women; 6 officers, 57 enlisted personnel; 42 Army, 5 Air Force, 14 Navy, 2 undefined; the total is less than the number used for analysis due to failure of 11 respondents to provide identifying information).

Questionnaire Design

Elicitation of Behaviors. The academic/training staff of DEOMI (n = 20) were asked to list "Five specific behaviors that would be indicative of 'poor equal opportunity climate.'" Examples of specific behaviors were provided. The emphasis was on a definable unit of behavior, not a series of events spread out over time. Examples of behaviors the staff proposed included the following: "One of the noncommissioned officers consistently tells jokes about blacks and other minorities" and "a male officer frequently touches a female officer but never touches another male officer." Over 100 behaviors were provided and examined for specificity and redundancy. The analysis reduced the list to 78.

Importance Ranking. A separate group of Guard and Reserve personnel (n = 50), taking a DEOMI short course, was asked to assign a rating from 1–10 to each behavior. The lower end of the scale represented *No importance*, while the high end was anchored at *Of critical importance.* After examining the items and the ratings, the number of items was further reduced to 71.

Design of Response Dimensions. Responses were based on a 5-point scale. For the equal opportunity behaviors part of MEOCS, the responses were cast as follows:

1 = *There is almost no chance that the behavior occurred.*
2 = *There is a small chance that the behavior occurred.*
3 = *There is a moderate chance that the behavior occurred.*

4 = *There is a reasonably high chance that the behavior occurred.*
5 = *There is a very high chance that the behavior occurred.*

Selection of Items for Measuring Work-Group Effectiveness and Organizational Commitment. Items for these two sections were taken from two sources. For Work-Group Effectiveness, 15 (later reduced to 12) items from the United States Air Force Organizational Assessment Package (Short, 1985) were selected. These items had high loadings on factors labeled Work-Group Effectiveness and General Organizational Climate. For Organizational Commitment, 15 (later reduced to 12) items from the questionnaire designed by Mowday, Steers, and Porter (1979) were selected and rewritten to conform to a military situation.

Development of Situational Scenarios. In order to test the instrument for discriminant validity, two hypothetical locales were devised. Information was provided on each locale along six dimensions taken from the management indices used by the United States Air Force to assess the level of human relations climate (Department of the Air Force, Air Force Pamphlet AFP 30-13, issued January 21, 1985). The locales were described on each dimension as having "an above-average rate" or "a significant change from the previous year" for the *poor* EO Climate locale. For the *good* locale, the descriptors were "a below-average rate" or "a significant reduction from the previous year" on each dimension. The six dimensions used were as follows:

a. There is (filled in) percentage of Articles 15 for minorities and for whites.
b. There is (filled in) percentage of involuntary separations for minorities and for whites.
c. There is (filled in) percentage of courts-martial for minorities and for whites.
d. Sexual discrimination complaints filed and confirmed are (filled in).
e. Sexual harassment complaints filed and confirmed are (filled in).
f. There has been (filled in) hate group (like Ku Klux Klan) activities in this locale.

(An Article 15 is nonjudicial punishment administered by a commander for relatively minor infractions; involuntary separations are administrative actions in which individuals are separated from the service for the convenience of the service.)

Experimental Design

Variations of the questionnaires were administered twice to the members of DEOMI class 87-2. The purpose of each administration is indicated below.

Administration 1. Lists of the 71 EOC behaviors were given to 74 members of the class. The students were to judge the "chances that the behavior occurred in the non-DEOMI portion of Patrick Air Force Base during the past 30 days." This administration was used to explore the factorial structure of each part of the instrument and to assess the reliability of each factor and the total survey.

Administration 2. This was 7 days after the first survey. Again, the target of Patrick Air Force Base was used; however, the order of the behaviors was randomly mixed from the first administration. In addition, half of each group was asked to rate the *good* locale and half the *poor* locale on each of the 71 behaviors. A manipulation check was added by asking at the end of group of the 71 behaviors how "most people at this locale would rate the equal opportunity climate." The response was made on a 1–5 scale from *very poor* to *very good.* The second administration was used to assess test-retest reliability and to probe the discriminant validity of the survey.

Results and Discussion

Separate Principal Component Factor Analyses of the 71 equal opportunity behaviors were performed for each administration of the "Patrick" and the "good" and "poor" versions. The analyses used unity in the diagonals and Varimax rotation (oblique rotation failed to converge in 25 iterations).

Reliability Analysis

This analysis used the two administrations of the "Patrick" questionnaire. Cronbach alphas were computed for the total and for factors of each administration. In addition, scores were computed for the total and for factors from each administration. These were correlated over all subjects for an estimate of the test-retest reliability.

Manipulation Check

An Analysis of Variance was used with form number (1 or 2, corresponding to the type of scenario provided) as the grouping variable and global EOC as the dependent variable.

Effect of Situation on EOC Factors

From the data obtained on the second administration, factor scores were computed for each subject within each scenario condition. This g

six scores for each respondent. A Multivariate Analysis of Variance wa performed using the six factors as the dependent variables and scenari (good or poor) to group the subjects.

Structure of Equal Opportunity Behaviors

Six factors were retained from the Principal Components Analysis These factors together accounted for 65% of the total variance wit eigenvalues of 33.68 (47.4%), 3.67 (5.2%), 2.77 (3.9%), 2.16 (3.0%), 2.0 (2.8%), and 1.83 (2.6%), respectively. These six were selected using a scre line approach. The names assigned to the dimensions were:

Factor 1: Overall Concern with Equal Opportunity Issues. Items de: with both race and sex discrimination, as well as with administrati reactions to sexual harassment. The focus is on-base behavior.

Factor 2: Differential Behavior by Commanders. Items here deal wit commanders' treating minorities differently.

Factor 3: Stereotypes. These items deal with minorities and wome being treated in stereotypic fashion (e.g., females being mistaken f secretaries).

Factor 4: Sexual Role Definition. These items imply that the military a man's job.

Factor 5: Overt Sexual Harassment. Items deal with superiors usin their positions to demand sexual favors from subordinates.

Factor 6: Covert Sexual Harassment. These items suggest that a wom an's role is to be decorative and subordinate to a man.

Reliability of Survey

In the first administration, the survey exhibited a high degree of inte nal consistency. The Cronbach alpha over all items was .98, and for tw random halves, .96 and .97, respectively. The six scales were also high reliable (average alpha of.90). The correlation between the two halves w .88. On the second administration, the reliabilities of the six scales we satisfactory (average alpha of .89). When the target was changed to t constructed locales, the reliabilities remained quite good (average alp of .87).

Manipulation Check

The *good* and *bad* scenarios produced the desired effects. The glot judgment means for the two scenarios were significantly differe ($F(1, 59) = 63.07$, $p < .00001$) and in the expected directions [Me (good) = 3.46, Mean (bad) = 2.62].

Effect of External Conditions on Equal Opportunity Climate

The MANOVA used type of "locale" as the independent variable and the six scales as criteria. The Multivariate F was significant (*Mult* $F(12, 104) = 3.46, p < .0001$) as were the univariate tests for five of the six scales. Overt Sexual Harassment (Scale 5) was nonsignificant. The means were all in the expected directions.

These initial results, though based on small numbers of respondents, were encouraging for further development of MEOCS. It appeared to be sensitive to changes in the external world, and the preliminary reliabilities were quite acceptable.

PHASE 2

In the second phase, the MEOCS was revised and subjected to a field test at selected sites from all Military Services. The revised survey included new items designed to measure positive EOCs and a measure of job satisfaction drawn from the Organizational Assessment Package (Short, 1985). It was predicted that previously reported differences in perceptions of men and women, minorities and whites, and officers and enlisted members should obtain in a valid measurement of EO climate. If such differences were found, they would support the validity of the MEOCS. Thus, the purpose of Phase 2 was to further develop the factor structure of MEOCS and to validate the instrument based on these predictions.

Method

Five military sites were initially selected for the validation study, based on the following criteria: all Military Services (including the Coast Guard) must be represented; each site must have representative numbers of female and minority members; the total group must reflect a variety of missions and geographic locations; one site must be overseas. An additional site was added from the Air Force because of its convenience, wide representation of military women, and suitability for testing administration procedures. The sites were selected not to be representative of the Services, but to provide locations where a wide demographic range of military personnel could be assessed directly in on-site survey administrations and interviews.

Military members at each site were selected according to a purposive stratified sample reflecting racial/ethnic, gender, and officer or enlisted categories. Among the 1,650 respondents, Service representation ranged from 97 (Coast Guard) to 607 (Air Force). All major combinations (i.e., black/white, male/female, and officer/enlisted) were represented by at least 200 respondents, with the exceptions of white female officers (109),

black female officers (37), and black male officers (80). The lower incidence of these groups was due to their sparse representation in the Services [white women comprise 11.5% of military officers; black women, 1.5%; and black men, 5.1% (Source: Defense Manpower Data Center, June 1989)].

A team of researchers reflecting racial/ethnic and gender diversity administered the 157-item survey on site in a group setting. Respondents rated 88 MEOCS items on a scale of 1 to 5, according to their estimation of the likelihood that listed behaviors (critical incidents) may have occurred at their duty location during the last 30 days. The survey package also included 12 items measuring commitment to the Service, 5 job satisfaction items, 6 items assessing perceived work-group effectiveness (sources for these items are described in Landis, Fisher, & Dansby, 1988), 27 items adapted from the Racial Attitudes and Perceptions Survey (RAPS; Hiett et al., 1978), several demographic items, and global items asking whether the respondents perceived that they had been victims of discrimination. After each administration a random sample of the group was asked to remain and respond to a structured interview concerning the readability of the survey and its perceived validity for the stated purpose. Questionnaires and computer-scorable answer sheets were collected by the researchers after each administration.

Results and Discussion

The MEOCS portion of the questionnaire was factor-analyzed using principal component analysis with varimax rotation. Five primary factors were identified, accounting for a total of 83.2% of the variance. The factors are listed in Table 1, along with their psychometric properties.

Table 2 presents a summary of significant factor score differences between various racial/ethnic, gender, and personnel category groups.

Commitment to the Service scores were higher for whites than for blacks ($F[1, 1623] = 10.78, p < .01$); higher for males than for females ($F[1, 1623] = 5.01, p < .05$); and higher for officers than for enlisted members ($F[1, 1623] = 20.92, p < .0001$). Officers scored higher than enlisted members on job satisfaction ($F[1, 1623] = 15.85, p < .0001$). Whites rated their work groups higher in effectiveness than did blacks ($F[1, 1623] = 10.56, p < .01$); officers rated work group effectiveness higher than enlisted members did ($F[1, 1623] = 22.88, p < .0001$).

On the RAPS portion, blacks perceived more discrimination against minorities than did whites ($F[1, 1623] = 369.99, p < .0001$); women perceived more than men ($F[1, 1623] = 56.26, p < .0001$); and black officers perceived more than black enlisted, while the reverse was true for whites ($F[1, 1623] = 12.80, p < .05$). On the RAPS "Reverse" Discrimination factor, males perceived greater occurrence than did females

TABLE 1
Initial MEOCS Factor Structure

Factor	No. of Items	Eigenvalue	Alpha
1. Sexual Harassment	21	20.93	.93
2. Differential Command Behaviors	11	4.85	.90
3. Positive EO Behaviors	8	1.85	.77
4. Overt Racist/Sexist Behaviors	6	1.54	.68
5. "Reverse" Discrimination	4	1.03	.50

($F[1, 1623] = 10.90$, $p < .001$); whites perceived more than blacks ($F[1, 1623] = 45.85$, $p < .001$); and black officers perceived more than black enlisted personnel, while the reverse was true for whites ($F[1, 1623] = 8.99$, $p < .01$). On a third RAPS factor, males agreed

TABLE 2
Significant MEOCS Factor Score Differences

Factor	Significant Differences
1	Women perceived occurrence of more sexual harassment behaviors than did men ($F[1, 1623] = 39.62$, $p < .0001$); blacks perceived greater occurrence than whites ($F[1, 1623] = 28.39$, $p < .0001$); black officers perceived greater occurrence than black enlisted, but white enlisted perceived greater occurrence than white officers ($F[1, 1623] = 8.19$, $p < .01$).
2	Women perceived greater occurrence of differential command EO behaviors than did men ($F[1, 1623] = 21.54$, $p < .0001$); blacks perceived greater occurrence than whites ($F[1, 1623] = 241.78$, $p < .0001$); black officers perceived greater occurrence than black enlisted, but white enlisted perceived greater occurrence than white officers ($F[1, 1623] = 5.39$, $p < .05$).
3	Whites perceived greater occurrence of positive EO behaviors than did blacks ($F[1, 1623] = 72.37$, $p < .0001$); officers perceived greater occurrence than enlisted ($F[1, 1623] = 21.11$, $p < .0001$).
4	Blacks perceived greater occurrence of racist/sexist behaviors than did whites ($F[1, 1623] = 13.81$, $p < .001$); white enlisted personnel perceived greater occurrence than officers ($F[1, 1623] = 5.17$, $p < .05$).
5	Males perceived greater occurrence of "reverse" discrimination behaviors than did females ($F[1, 1623] = 6.45$, $p < .01$).

more than females that the races should be kept separate ($F[1, 1623] = 10.99$, $p < .001$), and blacks agreed more than whites that the races should be separated ($F[1, 1623] = 10.20$, $p < .01$).

The results from Phase 2 were interpreted to support the use of MEOCS as a measure of EOC. The psychometric properties were generally considered acceptable; however, additional items were generated after Phase 2 in an attempt to improve the reliability of Factors 4, Overt Racist/Sexist Behaviors, and 5, "Reverse" Discrimination, due to their relatively low alpha values (.68 and .50, respectively). The general pattern of results shows the predicted agreement between MEOCS and other instruments. As predicted, there were significant differences in how males and females, minorities and whites, and officers and enlisted members viewed the EOC. Comparisons between RAPS results and MEOCS results also supported the construct validity of MEOCS.

Based on the Phase 2 effort, a revised MEOCS package was created for Phase 3, field implementation as a management tool for military commanders in the field.

PHASE 3

In Phase 3, information from the field validation was used to create a shorter, more reliable version of MEOCS. Items with the highest factor loadings were retained, and the factor structure and factor names were revised to more accurately reflect item content. This revision resulted in 11 primary factors as listed in Table 3.

Method, Results and Discussion

The revised MEOCS consists of 119 items: 50 Equal Opportunity Behavior items; 12 Commitment items; 5 Work-Group Effectiveness items; 6 Job Satisfaction items; 27 Modified Racial Attitudes and Perceptions Survey items; and 19 items addressing demographic background, experience with discrimination, and overall ratings of EOC. The survey is offered to all Military Services as a service of DEOMI's Research Directorate to help military commanders in the field identify strengths and weaknesses in their organizations. A commander requests the survey from DEOMI and receives the necessary materials and complete instructions on sampling and administration. Completed surveys are returned in sealed envelopes and mailed to DEOMI, where they are analyzed and a feedback package is prepared for the commander. The commander may also request a consulting team from DEOMI to help with further analysis or action planning.

Responses from the first 850 participants in the operational survey program were factor-analyzed and reliabilities were computed. Table 3

TABLE 3
Revised MEOCS Factor Structure

Factor	No. of Items	Alpha
Equal Opportunity Behaviors[a]		
1. Sexual Harassment and Discrimination	10	.90
2. Differential Command Behaviors	10	.90
3. Positive EO Behaviors	10	.84
4. Racist/Sexist Behaviors	8	.85
5. "Reverse" Discrimination	7	.79
Organizational Effectiveness[a]		
6. Commitment	12	.84
7. Work Group Effectiveness	5	.87
8. Job Satisfaction	6	.82
Modified Racial Attitudes and Perceptions[a]		
9. Discrimination Toward Minorities	10	.91
10. Racial Separation	5	.81
11. "Reverse" Discrimination	5	.73

[a]Each section of the survey was factor-analyzed separately.

summarizes the results. In addition to the 11 factors, a 12 measure, Overall EO Climate, is computed. This measure includes two questions that ask respondents for a global estimate of the EO climate at their location on a 5-point scale ranging from *very poor* to *very good*.

GENERAL DISCUSSION

The development of the MEOCS is a significant step in the continued progress of the U.S. Military Services toward the goal of equal opportunity. In the first 6 months that DEOMI offered the survey and consultation program, 36 commanders requested assistance. As more commanders use MEOCS, more in-depth analysis of the relationships between EOC and other organizational factors will be conducted. Future research may also include probability sampling of all Services to establish Service norms for the MEOCS factors. Informal feedback from the commanders using the survey to the DEOMI staff indicates that the survey is a valuable tool in helping them pinpoint concerns and develop action plans to improve organizational functioning and effectiveness. Plans call for continued use of MEOCS in this manner, giving commanders a chance to be proactive in anticipating equal opportunity concerns and addressing them through organizational intervention. As more commanders become aware of the

service, officials at DEOMI expect increases in requests for the survey and broader participation by all services. In a time of reduced military budgets and personnel levels, proactive efforts to increase cohesion through better human relations become all the more important.

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ABSTRACT TRANSLATIONS

La construction et initial valide d'un instrument taxer climat égal de l'occasion dans le militaire est décrit. La recherche fut conduite en trois

phrases: contemple le projet et préliminaire valide à la Défense Direction égale De l'Occasion Institute (DEOMI), Patrick Aviation Base, FL; l'épreuve du champ et ultérie Les services; et révision subséquente et l'outil comme la partie d'un continuer [organizational] le service de l'analyse pour commandants militaires. Les résultats sont interprétés comme appuyer employer de l'instrument, le Militaire Climat Égal De l'Occasion Contemple (MEOCS), pour l'a eu l'intention du but. (l'extrait de l'approvisionnement de l'auteur)

Construcción e inicial vàlido de un instrumento tasar clima igual de ocasión en el militar es descrito. La investigación fue conducida en tres fases: diseño de examen estudio y preliminar válida a la Defensa Instituto Igual De Dirección De Ocasión (DEOMI), Patrick Aire Base De Fuerza, FL; examen de campo y m s v Servicios; y revisión subsiguiente y herramienta como parte de un continuar [organizational] servicio de análisis por comandantes militares. Resultados son interpretado como apoyar uso del instrumento, el Militar Examen estudio Igual De Clima De Ocasión (MEOCS), por el pensó propósito. (resumen de existencia de autor)